



SPECIAL OPEN MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

January 16, 2002

ARIZONA REPORTING SERVICE, INC.

## Court Reporting

Suite Three

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Phoenix, Arizona 85004-1103

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Prepared for:

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<p>1 AGENDA</p> <p>2 NO. PAGE</p> <p>3 U-1 Qwest's Policies on Dissemination</p> <p>4 of Individual Customer Proprietary</p> <p>5 Network Information to its Affiliates</p> <p>6 and Others 5</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 ALSO PRESENT:</p> <p>2 NAILEM</p> <p>3 DONNA NEILL</p> <p>4</p> <p>5 HISPANIC COMMUNITY ALLIANCE</p> <p>6</p> <p>7 CRISTINA SANTIAGO</p> <p>8</p> <p>9 THE AARONS COMPANY</p> <p>10 LESLEE OLSON</p> <p>11</p> <p>12 CAROLYN T. SULLIVAN, RPR</p> <p>13 CCR No. 50528</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 BE IT REMEMBERED that an Open Meeting was</p> <p>2 held at the Arizona Corporation Commission, 1200 West</p> <p>3 Washington Street, Phoenix, Arizona, commencing at</p> <p>4 10:00 a.m., on January 16, 2002.</p> <p>5</p> <p>6 BEFORE: WILLIAM A. MUNDELL, Commissioner - Chairman</p> <p>7 JIM IRVIN, Commissioner</p> <p>8 MARC L. SPITZER, Commissioner</p> <p>9 ALSO PRESENT:</p> <p>10 ARIZONA CORPORATION COMMISSION</p> <p>11 SHELLY HOOD</p> <p>12</p> <p>13 ARIZONA ATTORNEY GENERAL'S OFFICE</p> <p>14</p> <p>15 JANET NAPOLITANO</p> <p>16</p> <p>17 QWEST CORPORATION</p> <p>18 TIMOTHY BERG</p> <p>19 JAMES SMITH</p> <p>20 TIM FYKE</p> <p>21</p> <p>22 ARIZONA COMMUNITY ACTION ASSOCIATION</p> <p>23</p> <p>24 MARY ELLEN KANE</p> <p>25</p> <p>26 ARIZONA CONSUMERS COUNCIL</p> <p>27 PHYLLIS ROWE</p> <p>28 ALBERT STERMAN</p> <p>29</p> <p>30 ARIZONANS FOR COMPETITION IN TELEPHONE SERVICE</p> <p>31 JON POSTON</p> <p>32</p>	<p>1 CHMN. MUNDELL: This is the time set for a</p> <p>2 special open meeting on Qwest's policies on</p> <p>3 dissemination of customer information to its</p> <p>4 affiliates and others.</p> <p>5 A couple housekeeping items. First of all,</p> <p>6 if there are any elected officials in the audience, I</p> <p>7 will, in fact, call them. I think the Attorney</p> <p>8 General is going to be here. There she is right</p> <p>9 there. I will be calling her because she's got</p> <p>10 something else scheduled. Having said that, I do want</p> <p>11 to make a brief opening statement.</p> <p>12 The Corporation Commission called this</p> <p>13 meeting this morning because we were concerned about</p> <p>14 the privacy of the people of Arizona. We called this</p> <p>15 special open meeting to discuss the issues of</p> <p>16 importance to the citizens of Arizona. And I want to</p> <p>17 say, this appears to be a truly bipartisan issue that</p> <p>18 has struck a nerve with the people of Arizona. As I</p> <p>19 said a second ago, the Attorney General is here, there</p> <p>20 are elected officials, both Democrat and Republican,</p> <p>21 in the audience that wish to speak.</p> <p>22 I also want to give special credit to</p> <p>23 Commissioner Irvin. He actually started the inquiry</p> <p>24 into the practices of Qwest when he wrote a letter on</p> <p>25 January 4th to Qwest on this issue. So he deserves</p>

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1 credit for that, and I want to note that for the  
2 record.

3 Let me be blunt. I believe the burden should  
4 be on Qwest and not the consumers of Arizona. We need  
5 an opt-in rule that is constitutional.

6 For Qwest to use customers' records in the  
7 manner they have proposed in my opinion is wrong, and  
8 it is an invasion of privacy. We are talking about  
9 the most private records in our society. We are  
10 talking about phone records. This is different than a  
11 supermarket keeping track of whether you buy Frosted  
12 Flakes or oatmeal and whether you like Coke or Pepsi.  
13 We're talking about who you call, when you call, how  
14 long you call, and how often.

15 We need an opt-in rule. I believe that Qwest  
16 should not be allowed to use customer records unless  
17 the customer affirmatively allows it. And as I said  
18 in this morning's paper, I'm willing to go to court to  
19 protect the privacy of the customers of Arizona.

20 Either of my colleagues have any opening  
21 statements they'd like to make?

22 Commissioner Irvin. We'll go by seniority.

23 COM. IRVIN: Thank you, Commissioner Mundell.

24 Let me say that I'm here and thank my  
25 colleagues for allowing this meeting to take place.

1 you can see our government at work. And we are  
2 listening to you, the people, because you're the ones  
3 we work for. And so I thank each and every one of  
4 you, as well.

5 CHMN. MUNDELL: Thank you, Commissioner.  
6 Commissioner Spitzer.

7 COM. SPITZER: Thank you very much,  
8 Mr. Chairman.

9 I think it's important to come to grips with  
10 what this matter is about as well as what it is not  
11 about. There were a few eyebrows raised, and I begged  
12 the indulgence of the Chairman, when we had the line  
13 siting case when I discussed Rousseau and the social  
14 compact. And I think that is as essential today as it  
15 was during that line siting case.

16 This is not about just another corporate  
17 marketing disaster like the Edsel or the XFL or new  
18 Coke. This invokes a fundamental American value  
19 placed in the Constitution of this country and placed  
20 in the Constitution of Arizona, and that is, the right  
21 to privacy.

22 This is not about telemarketing.  
23 Telemarketing is one of those things that people  
24 complain about, but all the demographic studies and  
25 economic studies show that it's successful. A lot of

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1 This Commission has been flooded by numerous calls and  
2 complaints regarding this policy that was put out.

3 I might even, depending on how today's  
4 proceedings go, to even add another caveat to  
5 Commissioner Mundell's proposed ideas and plans, and  
6 that is, making an assumption that Commissioner  
7 Mundell's idea of an opt-in plan -- whether it does or  
8 doesn't receive support, we'll find out or where we go  
9 from there. But also to give some value added that  
10 if, in fact, consumers -- this information from  
11 consumers, proprietary information, is going to be  
12 made available for profiteering, that there should be  
13 something in it for the consumers. So I will look at  
14 trying to tie a discounted rate onto that information  
15 so that consumers can certainly benefit and receive  
16 something in that mind and will ask our Legal  
17 Department to look and see that that is done,  
18 depending on how today's descriptions go.

19 I do want to thank my two colleagues,  
20 Commissioner Mundell and Commissioner Spitzer, for  
21 their support in this endeavor. And I do want to  
22 thank most importantly the people of Arizona for  
23 standing up as one and voicing their objection to this  
24 and bringing this to the attention of the Corporation  
25 Commission and letting us know how you feel so that

1 folks complain about violence and sex on television,  
2 and then the ratings for Temptation Island seem to be  
3 very high. So people seem to complain about  
4 telemarketing, but it is economically viable because  
5 there's a willingness of folks to endure this what I  
6 find to be a hassle but nevertheless is commercially  
7 successful.

8 But this case is not, contrary to the opinion  
9 of the Tenth Circuit, about telemarketing, and it's  
10 not about the First Amendment. Again, this case is  
11 about a fundamental American and Arizona value, and  
12 that is, the right of privacy.

13 We are here because the former U S WEST, now  
14 Qwest, challenged a ruling from the Federal  
15 Communications Commission which had adopted an opt-in  
16 rule. And the company was successful before the Tenth  
17 Circuit Court of Appeals in overturning that rule, and  
18 we are here in ultimate goal of protecting the rights  
19 of privacy by building, whether it's this proceeding  
20 today or future proceedings, in accordance with  
21 Commission rules and due process and rule of law, a  
22 factual record to sustain an opt-in provision, which,  
23 again, unfortunately, was overturned by the proceeding  
24 in the Tenth Circuit.

25 A quote from the CEO of Qwest that the

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1 company was simply following the FCC rules in my  
2 opinion was a fundamentally dishonest statement since  
3 the FCC had promulgated rules that Qwest or U S WEST,  
4 the predecessor entity, challenged in court, was  
5 successful in overturning. So to say that the company  
6 was simply following the rules when it proposed  
7 through its notice to the citizens of Arizona to use  
8 this confidential information, again, to me, is  
9 fundamentally dishonest.

10 We have, unfortunately, before us what I view  
11 to be a horrendous decision by the Tenth Circuit. And  
12 as a lawyer -- I've been a lawyer for 20 years now --  
13 you win cases, you lose cases. But this one was tough  
14 to swallow. And the more times I read this opinion,  
15 the more disheartened I became.

16 I have to point out, while we're talking  
17 about disclosure here, that I mentioned that the  
18 briefing of the case suggested that Lawrence Tribe had  
19 represented U S WEST in raising the First Amendment  
20 issue, who's, of course, a noted Harvard law professor  
21 and attorney generally associated with liberal cases.  
22 My aide, Paul Walker, said, Well, I bet you the judge  
23 that wrote the opinion was a Reagan appointee who  
24 graduated from Michigan Law School. And sure enough,  
25 the judge who wrote in my view the erroneous opinion

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1 would take a clean look and a different view and with  
2 a different record, a different factual record, and  
3 come to the conclusion as the Chairman mentioned and  
4 my colleague Commissioner Irvin mentioned, which with  
5 I agree, that the opt-in is better public policy for  
6 the state than opt-out.

7 Finally, we are dealing with a regulated  
8 utility here. And in my view, there is an expectation  
9 of privacy that does not exist with other commercial  
10 enterprises, retail enterprises, banks, and the likes.  
11 When you purchase a magazine subscription, I think at  
12 heart, the consumer has a reasonable expectation that  
13 their name is going to end up on a mailing list. And  
14 they may not be happy about that, but that certainly  
15 is an expectation that exists.

16 In the area of regulated utilities, when a  
17 customer subscribes to the telephone service local  
18 exchange, they believe they're receiving a dial tone.  
19 They don't have any reasonable expectation that the  
20 information set forth in the Qwest notice, which is  
21 the so-called CPNI, which we'll have greater  
22 discussion of later today, will be disseminated  
23 publicly. Again, the customers feel that they're  
24 purchasing a dial tone. That's the consideration, not  
25 the expectation that this information will be used.

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1 is a Wolverine, but maybe we'll have another Wolverine  
2 here today trying to render some justice.

3 What I think was disturbing, again, was  
4 the -- I get back to what this case was about and what  
5 it's not about. The majority opinion would have you  
6 believe that this is about telemarketing. The judge  
7 analogized Qwest's marketing efforts to the  
8 distribution of handbills in revolutionary times.  
9 Well, in 1787, if you didn't want to take a handbill,  
10 you could walk around. You didn't have to accept the  
11 handbill. The intrusiveness of the invasion of  
12 privacy proposed by Qwest is analogous to the  
13 distributor of handbills in 1787 entering your home at  
14 2 in the morning and dropping the handbill on your bed  
15 while you slept. It's not analogous and it's wrong.

16 The Court also, in what I think will be  
17 ultimately an infamous footnote, described how the  
18 right of privacy can be a nuisance. And that's a view  
19 that I do not believe that's shared hopefully by the  
20 majority of the judiciary in this country nor  
21 certainly in my view by the majority of the citizens  
22 nor by the elected officials. And if and when it's  
23 appropriate for further judicial review of this  
24 matter, I would certainly hope that the Ninth Circuit  
25 Court of Appeals or ultimately the U.S. Supreme Court

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1 We have in my view two serious loopholes in  
2 the status of the current law that need to be examined  
3 very fully by this Commission and a full factual  
4 record needs to be undertaken.

5 The first is the definition of commercially  
6 reasonable, which I think opens the door to a lot of  
7 potential mischief. That's a term that needs to be  
8 defined.

9 Secondly, the so-called Qwest family of  
10 companies. That seems to be very open-ended. Qwest  
11 could buy Pizza Hut tomorrow. Are we going to start  
12 receiving solicitations from Pizza Hut because my  
13 records show that I call Domino's? Is that, again,  
14 commercially reasonable? And does this, by virtue of  
15 the definition of Qwest family of companies, open the  
16 door to even further mischief?

17 I think, again, let's get back to the social  
18 contract that I discussed at the open meeting earlier  
19 this month. Certain obligations are imposed upon us  
20 to live in a free society. And maybe, Mr. Chairman,  
21 the situation with Enron will result in a  
22 reexamination of corporate governance in this country,  
23 and I hope that is the case. I hope that is the case.  
24 Because, as I said at the prior meeting, corporate  
25 America seems to be obsessed with quarterly earnings

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1 statements. A great degree of power has devolved to  
2 institutional investors. They seem to think that  
3 folks buy and sell mutual funds based on daily  
4 reports. They seem to be insisting in their quest for  
5 corporate earnings, improvements, asking corporate  
6 leadership to sacrifice for the long term, and nobody  
7 elected these folks. The Wall Street analysts who  
8 formerly were content to evaluate stocks and say, buy,  
9 hold, sell, and look at fundamentals are now  
10 purporting to run companies.

11 And when the Chairman of Qwest says that the  
12 Corporation Commission and the Attorney General of the  
13 State of Arizona should not be involved in this type  
14 of issue, that we should butt out, I think ignores the  
15 social contract that all citizens, not just corporate,  
16 but all citizens, have with each other and with their  
17 government and suggests that the elected leadership of  
18 this state is somehow abdicating its authority to  
19 these Wall Street analysts, who I don't recall ever  
20 moving to Arizona and deciding to run for office.  
21 Again, that seems to me an examination of our  
22 corporate culture that in light of the Enron  
23 bankruptcy and other related developments maybe will  
24 cause us to be a little introspective and see how this  
25 what we still term the social compact has to do with

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1 corporate governance in Arizona.

2 But I look forward not only to this meeting  
3 but to the development, Mr. Chairman, of a factual  
4 record that will lead to a greater understanding of  
5 privacy, the reasonable expectations of the people of  
6 Arizona, the underpinning of the Arizona Constitution,  
7 which in 1912 directly granted to the people of this  
8 state a right to privacy. And I look forward to a  
9 successful resolution of this matter; again, with the  
10 prime result being the protection of this fundamental  
11 American value, the right to privacy.

12 Thank you, Mr. Chairman.

13 CHMN. MUNDELL: Thank you, Commissioner  
14 Spitzer.

15 A couple housekeeping items again. We have a  
16 listen line; so when you come to speak, please  
17 identify yourself for the record when you come to the  
18 podium. And we have speaker slips. If you haven't  
19 had a chance to fill them out, we have speaker slips  
20 outside. You can go out the back door and fill out a  
21 speaker slip and get it over to the woman to my right,  
22 and we'll call you in order that you, in fact, filled  
23 out the speaker slip.

24 So having said that, I will call at this time  
25 the Attorney General of the State of Arizona, Janet

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1 Napolitano.

2 MS. NAPOLITANO: Thank you, Mr. Chairman and  
3 members of the Commission. My name's Janet  
4 Napolitano. I am the Attorney General of the State of  
5 Arizona, and I appreciate the opportunity you've  
6 extended to me here today to appear before you, and I  
7 applaud the Commission for taking on this very  
8 important issue.

9 I am here in part because of my experience  
10 with Qwest during my tenure in office. This company  
11 has a colorful history. We've had to take action  
12 twice against them over consumer fraud violations in  
13 the last two years. One is a lawsuit still pending.  
14 And most recently, I've made my concerns about the  
15 opt-in/opt-out problem that we're talking about today  
16 known not only to Qwest executive management but also  
17 to the public and the Commission.

18 We're here because Qwest recently announced  
19 in a very confusing manner its plan to share customer  
20 account information with subsidiaries and outside  
21 companies. In its December bill insert, realistically  
22 a time when consumers are occupied with the holidays  
23 and end-of-the-year matters, telling customers about  
24 this plan, Qwest stated the following: "Qwest has a  
25 long history of treating customer account information

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1 confidentially. We think that's one reason you trust  
2 us."

3 The truth is, customers don't trust Qwest.  
4 Every day, my office receives numerous complaints  
5 about this particular phone company's activities and  
6 its overbilling, slamming, and cramming practices.  
7 And this plan to sell account information is just one  
8 more opportunity for Qwest to mistreat consumers.

9 On January the 8th, I sent a letter to Qwest  
10 CEO Joseph Nacchio detailing my concerns about the way  
11 Qwest has chosen to let customers opt-out of having  
12 their information sold. The information that the  
13 company wants to sell, by the way, is very personal,  
14 as has been noted before. This is data that law  
15 enforcement agencies have to get a grand jury subpoena  
16 or a court order to obtain. It shows when, where, and  
17 whom a customer calls. This intimately private  
18 information can be used to find out which doctors,  
19 banks, merchants, public offices, and anyone else you  
20 do business with. It can also tell how long and what  
21 hours of the day that you are on the Internet.

22 Now, Qwest states in its vaguely worded  
23 insert that it will "share" this information with its  
24 affiliates and with third parties "when it is  
25 commercially reasonable to do so."

5 (Pages 14 to 17)

<p>Page 18</p> <p>1 It's not difficult to imagine that 2 promiscuously distributing this private information 3 for profit will always be viewed by Qwest as 4 "commercially reasonable," giving Qwest carte blanche 5 to traffic in their customers' personal information, 6 as if customers weren't already being solicited by 7 telephone enough. 8 Now, the type of information we're talking 9 about today has been given the highest level of 10 protection under the federal Telecommunications Act of 11 1996. In implementing that Act, the FCC in 1998 12 adopted a rule requiring phone companies to obtain 13 their customers' express permission before sharing 14 this information. This is called opt-in. It's also 15 called common courtesy. 16 Now, because of the recent Tenth Circuit 17 opinion, the FCC is reconsidering its rule. In the 18 meantime, the FCC is allowing phone companies to 19 choose either the opt-in approach or opt-out. Now, 20 under opt-out, the phone company can automatically 21 sell your account information unless you tell them not 22 to. It's kind of like your teenager leaving you a 23 note after he's left for work that unless he hears 24 from you by 5:00, he assumes he can stay out past 25 curfew on a school night. I have joined with 37 other</p>	<p>Page 20</p> <p>1 financial institutions sent out opt-out notices as 2 required by the federal Gramm-Leach-Bliley Act. The 3 majority of consumers either didn't remember serving 4 receiving the notices, or, at most, merely glanced at 5 them. I'm a lawyer. I didn't understand them. Qwest 6 likely assumed that a majority of its own customers 7 would probably not read the notice or understand it 8 and would, therefore, not opt-out. 9 Another concern, perhaps most vexing of all: 10 Qwest gave customers only 30 days to object with only 11 one phone number and too few operators to handle 12 customer calls. Many customers who tried calling the 13 telephone number provided were unable to get through, 14 were put on hold for long periods, or were connected 15 with uninformed representatives. Working people were 16 basically left with no time to call since the phone 17 center was not available on nights and weekends. And 18 to add insult to injury, many of those who did manage 19 to get through, myself included, were shamelessly 20 solicited with offers for buying wireless or other 21 services from Qwest. 22 It was only after a letter from this office, 23 public outcry, and extensive news coverage that Qwest 24 extended the deadline and the hours available to call. 25 This is consistent with Qwest's remedial history.</p>
<p>Page 19</p> <p>1 attorneys general in writing to the FCC, urging it to 2 again require opt-in consent. And a copy of that 3 letter is attached to my testimony, and I ask that it 4 be put into the record. 5 Now, given the choice between opt-in and 6 opt-out, Qwest decided against its customers and chose 7 opt-out. As it does when customers try to question 8 their bills or cancel services, Qwest set up obstacle 9 after obstacle in front of customers attempting to get 10 their names off the sales lists. 11 For example, the only notice that Qwest gave 12 its customers about the right to opt-out was a dense 13 and confusing bill insert which read in the bill: 14 "Qwest account information--the following does not 15 affect your billing." This is kind of like saying, 16 "You don't have to read this." And, in fact, many 17 customers did not read the insert or, after glancing 18 at it, thought it was just another sales pitch from 19 Qwest and tossed it. Were it not for the concerns 20 raised by the Commission, by me, and by the media, 21 most customers in Arizona simply would have remained 22 unaware, and Qwest would have been able to profit from 23 their account information. 24 In deciding to use opt-out, perhaps Qwest was 25 aware of recent surveys showing the experience when</p>	<p>Page 21</p> <p>1 Qwest seems to only respond or fix problems when the 2 Attorney General or the Corporation Commission 3 intervenes or writes a stern letter. Qwest's 4 assertion that it is trusted by customers because it 5 has a long history of treating customer account 6 information confidentially is misguided. This new 7 policy and the way it has been handled is an egregious 8 abuse of that trust. 9 I call on Qwest to voluntarily rescind its 10 new opt-out policy in favor of opt-in, so that Qwest 11 must obtain its customers' permission before being 12 able to sell their information to other companies. If 13 Qwest does not do so, I will work with the Commission 14 to examine writing a rule to require it to do so. 15 Next, at a minimum, Qwest should provide its 16 customers with an easy -- an additional easy-to-read 17 notice clearly stating Qwest's intentions and the 18 rights of customers regarding their account 19 information. 20 Qwest should also provide everyone who has 21 called or calls in the future an automatic 22 confirmation that they have taken their name off the 23 sales list. 24 And if it so chooses to continue with an 25 opt-out policy, Qwest should be required to re-notice</p>

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1 its customers each year with a clearly worded notice  
2 that will be easy for the average phone customer to  
3 understand.

4 Qwest's failure to change its policy from  
5 opt-out to opt-in is a clear sign that it wants to  
6 continue with its anti-consumer practices, profiting  
7 from customer information with very little say on the  
8 part of those customers. It would also show that  
9 Qwest is simply not ready to expand its services and  
10 enter the long distance market, where they will have  
11 even more access to customers' personal calling  
12 information to sell.

13 The Commission should take the following into  
14 consideration: As you know, I've already provided the  
15 Commission comments on my opposition to Qwest's  
16 entering the long distance market without first  
17 getting its consumer house in order.

18 Qwest's efforts to share their customers'  
19 private information comes at the same time that it is  
20 seeking to enter the long distance market. Qwest's  
21 access to customers' private information gives it a  
22 distinct marketing advantage over long distance  
23 competitors, who will know nothing about customers or  
24 the calls that they make. The effect of Qwest's  
25 opt-out program should be taken up by the Commission

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1 may add companies and so forth, just as Commissioner  
2 Spitzer recognized in his comments. So the customer  
3 really doesn't know ultimately who is going to get  
4 this information.

5 CHMN. MUNDELL: That's the purpose of this  
6 hearing today. We'll be asking a lot of questions  
7 after Qwest has an opportunity to make their  
8 presentation.

9 Commissioner Spitzer.

10 COM. SPITZER: Thank you, Mr. Chairman.

11 Attorney General, I understand that the  
12 public comment period is closed on the FCC proceeding.  
13 Where exactly are we with the -- you stated the 37  
14 attorneys general participated in that. And what is  
15 your expectation of having some reopening of the  
16 record to produce a future FCC order that would (a)  
17 protect privacy and (b) withstand constitutional  
18 scrutiny?

19 MS. NAPOLITANO: We have not had any response  
20 from the FCC, and so I couldn't give you a current  
21 status report of when they're actually going to take  
22 up the issue.

23 CHMN. MUNDELL: Commissioner Irvin.

24 COM. IRVIN: First of all, thank you, Madam  
25 Attorney General. It's nice to see you. We don't get

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1 in the upcoming hearing on Qwest's long distance  
2 application.

3 Matters such as this one cannot emphasize  
4 strongly enough the need to constantly monitor Qwest's  
5 activities for the sake of its customers.

6 I'm grateful for the Commission's interest in  
7 this issue. I appreciate the opportunity to speak  
8 with you today. If you have any questions, I'd be  
9 glad to answer them.

10 Thank you very much.

11 CHMN. MUNDELL: Thank you for your comments.

12 In general, I have the notice that you referred to,  
13 and you're right. I've got it here, and it says, "The  
14 following information does not impact your Qwest  
15 billing," which is tantamount to saying, you can throw  
16 it in the trash. It's very misleading. It should  
17 have said something about important information  
18 concerning your privacy rights. And so that is  
19 something that I intend to deal with and this  
20 Commission will deal with in the next notice that goes  
21 out.

22 MS. NAPOLITANO: Also note, Chairman Mundell,  
23 that in the notice they list some of the affiliated  
24 companies of Qwest with whom they will share  
25 information, but they also have a line that says, we

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1 this privilege to have you come down here.

2 MS. NAPOLITANO: Over.

3 COM. IRVIN: It's a tough street to cross.  
4 You've got no traffic lights.

5 MS. NAPOLITANO: Tell me.

6 COM. IRVIN: But let me -- I have a copy  
7 before me of the -- it's titled -- and I don't know if  
8 you've seen this, and I'll make your office aware of  
9 it. And I've highlighted the part. And it's really  
10 the third paragraph on the first page. And it says:  
11 Just to be clear, Qwest's policy is to share customer  
12 account information only with family of companies and  
13 others authorized to help customers get Qwest service.  
14 That's pretty open-ended. Would you agree?

15 MS. NAPOLITANO: I would agree.

16 COM. IRVIN: And what -- I really wanted to  
17 get my confirmation on that, and I would also like to  
18 solicit the assistance of the Attorney General -- and  
19 the reason that I am going to propose to this  
20 Commission that we adopt in a rulemaking process that  
21 should the courts rule as the Tenth Circuit or the  
22 Tenth Circuit should be upheld by the Ninth Circuit,  
23 should we take this action and which it will surely  
24 be, I believe Qwest will take it to court -- and I  
25 agree with Commissioner Mundell that I'm willing to

7 (Pages 22 to 25)



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1 fight the court battle, and I trust your office will  
2 join us in that endeavor. But that would be, then, if  
3 it is upheld, there has to be something in it for the  
4 consumers. And I would be looking at a discount  
5 policy to be attached with this program to say that if  
6 you're going to use this information, then we're going  
7 to be allowed -- which I know is in the pure view of  
8 the Commission on a ratemaking authority. Would you  
9 have any comments on that?

10 MS. NAPOLITANO: I hadn't thought about it  
11 before you mentioned it here this morning,  
12 Commissioner, but that is an avenue worthy of  
13 exploration. If a customer's personal information is  
14 going to be bartered, they ought to have a chance to  
15 sell it, not have it taken from them.

16 COM. IRVIN: Thank you.

17 MS. NAPOLITANO: Thank you very much.

18 CHMN. MUNDELL: Let's go ahead, then, and  
19 we'll go to the portion of the proceeding -- we'll  
20 give the company an opportunity to respond and explain  
21 their policy to the Commission and to the people of  
22 Arizona. I'm not sure who's going to speak. We have  
23 a number of individuals representing the company.

24 Go ahead and state your name for the record,  
25 please.

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1 MR. BERG: Timothy Berg of the law firm  
2 Fennemore Craig on behalf of Qwest Corporation.

3 With me today I have Jim Smith, who is the  
4 executive vice president of consumer markets for  
5 Qwest; Theresa Wahlert, who is the Arizona vice  
6 president public policy for Qwest; and Tim Fyke, who's  
7 a lawyer in the Qwest Public Policy and Law  
8 Department.

9 What we're going to do in terms of our  
10 presentation today is have Mr. Smith come up and  
11 address you first about what Qwest's policies are,  
12 what steps we've taken since this issue has arisen,  
13 sort of where we are today with it. And then Mr. Fyke  
14 is going to come up and offer a brief summary of sort  
15 of Qwest's legal position on the legal issues that  
16 have been talked about among you and the Attorney  
17 General. Obviously, after that, we're available to  
18 answer any questions the Commission has.

19 Thank you.

20 CHMN. MUNDELL: Thank you. I don't know who  
21 you're going to call next.

22 MR. BERG: Mr. Smith first.

23 MR. SMITH: Good morning, Mr. Chairman,  
24 Commissioners. My name is Jim Smith, and I am  
25 executive vice president of consumer markets for Qwest

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1 Communications, and I am accountable for the customer  
2 notification that led to this meeting.

3 I want to begin by being clear and stating  
4 our policy for sharing customer account information.  
5 Qwest shares customer account information only with  
6 its family of companies and others authorized to help  
7 customers get Qwest services. We do not share this  
8 information with anyone else except we may share  
9 customer account information where required by law to  
10 prevent the unlawful use of services or if we sell  
11 that part of our business.

12 I also want to start, Commissioners, by  
13 apologizing for any anxiety that customers may have  
14 felt after reading our notice or news articles about  
15 that notice.

16 We sent out a notice I believe that created  
17 two problems:

18 First, it raised some questions about Qwest's  
19 use of account information by not making clear what we  
20 meant by the term commercially reasonable and, more  
21 precisely, what we did not mean by the term in  
22 connection with third party disclosures.

23 We gave some examples of what we meant by  
24 commercially reasonable, including providing account  
25 information to companies where service packages

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1 involving part of a Qwest service, like a DSL line,  
2 and part of another company's service, like Internet  
3 access, so that the service you order works when the  
4 two companies -- both companies are involved.

5 Another example might be if we provide  
6 account information to a CLEC or a competitive local  
7 service provider, if you've chosen them to provide  
8 your local service. It's these kinds of third party  
9 sharing that we meant to include in our reference to  
10 third party disclosures, not selling -- not selling  
11 customer account information on the street corner to  
12 the highest bidder for whatever use they might make of  
13 it.

14 And I think you understand the disclosures  
15 we've made are not extraordinary, and perhaps we  
16 should have used the phrase commercially routine to  
17 show exactly what we meant.

18 In any case, I want to repeat our policy. We  
19 share information only within the family of Qwest  
20 companies and others authorized to help our customers  
21 get Qwest services. We do not share this information  
22 with anyone else except we may share customer account  
23 information where required by law to prevent the  
24 unlawful use of services or if we sell that part of  
25 our business.

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1 COM. SPITZER: Mr. Chairman, can you define  
2 Qwest family of companies. For example, would that  
3 include Qwest's alliance with MSN for Internet?  
4 MR. SMITH: They are not within the Qwest  
5 family of companies.  
6 CHMN. MUNDELL: Commissioner, before we start  
7 asking questions, I was going to let him finish; and  
8 then Representative Hatch-Miller is here, and I was  
9 going to call him and get back to asking questions,  
10 just from a procedural perspective. I have a lot of  
11 questions, also, but I wanted him to finish his  
12 presentation, and then I was going to call on another  
13 elected official, Mr. Hatch-Miller, and then we'll get  
14 back to questions.  
15 COM. IRVIN: You overruled us.  
16 CHMN. MUNDELL: I did.  
17 COM. SPITZER: It's the prerogative of the  
18 Chair.  
19 CHMN. MUNDELL: I have this little gavel.  
20 MR. SMITH: I want to be clear,  
21 Commissioners, and I was clear in my response to the  
22 Attorney General's letter to Qwest that we do not sell  
23 customer account information, which is essentially  
24 information about the types of services that a  
25 customer purchases from Qwest and how those services

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1 are used by the customer. We do not sell this  
2 information to anyone. That was made clear in the  
3 letter to the Attorney General, in spite of her open  
4 statement this morning. And we would not do this  
5 without explicit permission. To the extent that  
6 customers reading our legal notice came away with a  
7 different impression, again, I apologize, and I  
8 appreciate the opportunity this morning to set the  
9 record straight.  
10 Our notice that we sent out beginning in  
11 December followed the Federal Communications  
12 Commission guidelines on how to notify customers about  
13 the information that we collect and how we will use it  
14 in the future. And while other industries have  
15 similar rules, the FCC guidelines required us to  
16 notify customers and to give them 30 days to decide if  
17 they did not want us to use this information.  
18 I also want to note that the FCC also stated  
19 that they agree that the sharing of customer account  
20 information within one integrated firm does not raise  
21 significant privacy concerns because customers would  
22 not be concerned with having their account information  
23 disclosed within a firm in order to receive increased  
24 competitive offerings.  
25 Our customer notification is consistent with

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1 privacy notices sent out in 2001 by companies that  
2 collect consumer data, such as credit agencies, banks,  
3 credit card companies, telemarketers, department  
4 stores, and insurance companies.  
5 Sharing of information within companies is  
6 very common and seems not to have caused great concern  
7 before. And to give you some examples, cable  
8 operators, like AT&T Broadband and Cox, are allowed to  
9 share subscriber information for their own business  
10 purposes, including offering telephone services.  
11 In addition, our research tells us that 20  
12 out of 22, that is to say, 90 percent, of the major  
13 newspapers in our local service territory compile  
14 customer information through their Web site or  
15 subscription lists and share this information within  
16 their company or with third parties. Most of these  
17 papers offer an opt-out program, as does The Arizona  
18 Republic.  
19 Even in the case of personal information as  
20 was mentioned earlier within the context of financial  
21 transactions, where I think consumers have a very high  
22 requirement for privacy, the federal law included an  
23 opt-out option that gave consumers the opportunity in  
24 advance of the disclosure of personal information to  
25 certain third parties to direct that that information

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1 not be disclosed. My own bank that I received a  
2 notice from has just this kind of a notice, an opt-out  
3 provision, and importantly says that one of the  
4 reasons that they would want to share information  
5 amongst their companies is to keep me informed about  
6 financial services that can meet my needs now and in  
7 the future.  
8 My interest here is in not selling  
9 information to third parties but rather to utilize  
10 information in a fashion that can actually serve our  
11 customers. To give you an example, let's say one of  
12 our customers order an Internet service. They had a  
13 single line and ordered an Internet service. Given  
14 the nature of dial-up Internet service, it might be  
15 assumed that there was going to be people tying up  
16 that line to utilize it for Internet access a great  
17 deal of time. We might call that customer to suggest  
18 to them a second line. If the customer found value in  
19 it and ordered it, that would be a good thing for the  
20 customer and a good thing for Qwest. Additionally, if  
21 a customer subscribed to our Customer Choice offer, we  
22 might decide to give that valuable customer a discount  
23 on a long distance service offering if we understood  
24 how they were ordering their services from us.  
25 I want to make it clear that Qwest will honor

9 (Pages 30 to 33)

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1 requests from customers that their account information  
2 not be shared and we will not begin sharing this  
3 information inside the company until March 29th. We  
4 will also confirm, as was mentioned in our letter to  
5 the Attorney General, in response, we will also  
6 confirm with customers their decision not to  
7 participate in the information sharing process.  
8 Furthermore, customers can advise us at any time after  
9 March 29th that they don't want account information  
10 shared within Qwest and on a going-forward basis, and  
11 we will honor that request. Even so, I believe some  
12 customers have responded to the notice we sent by  
13 experiencing anxiety.

14 This led to the second problem. We got more  
15 customer calls than we expected, and we got them in a  
16 shorter period of time than we expected. And we have  
17 taken three steps to remedy that situation:

18 First, we began at the beginning of last week  
19 bringing on additional specially trained  
20 representatives, now totaling more than 290, to take  
21 customers' calls specifically wanting to talk with us  
22 about their CPNI request and an ability to opt-out.  
23 Beginning this past weekend, we extended to Saturdays  
24 and Sundays the hours that people can speak with a  
25 Qwest representative.

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1 Secondly, we have improved our Web site so  
2 that more customers can access that Web site  
3 simultaneously.

4 And third, beginning last night, we have  
5 launched an automated voice response set-up on our  
6 1-800 number so that customers who want to tell us  
7 that they don't want Qwest to share information inside  
8 the company can do so without waiting to speak to a  
9 customer representative. I checked this morning,  
10 Commissioners, and my understanding was as of about 9  
11 or 9:15, we had a three-second wait time for customers  
12 wanting to get in and talk with us.

13 Now, I say again, I regret any  
14 misunderstanding. We certainly value the  
15 confidentiality of customer information, and we  
16 certainly guard it carefully, and we always have.  
17 What information we use, we use only inside Qwest or  
18 with authorized representatives, and we use it only  
19 for very narrow purposes. And we have made it easier  
20 for our customers to say, thanks, but no thanks.

21 Thank you very much, Commissioners, for the  
22 opportunity to be here today, and I'd be happy to  
23 answer any questions that you might have now or --

24 CHMN. MUNDELL: Sir, as I said, I'm going to  
25 give Representative Hatch-Miller an opportunity to

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1 speak because the Legislature's in session, and then  
2 I'll bring you back up for questions from myself and  
3 the other Commissioners.

4 Representative Hatch-Miller, welcome.

5 REP. HATCH-MILLER: Thank you, Mr. Chairman,  
6 members of the Commission. I certainly appreciate the  
7 opportunity to come over and talk with you this  
8 morning.

9 You already know that as the chairman of the  
10 Energy, Utilities & Technology Committee in the House,  
11 I've been dealing with this issues of privacy for some  
12 time. So to have this opportunity that you're  
13 providing by having this meeting so quickly on this  
14 issue is an important one to me, and I thank you for  
15 that.

16 I want to remind all of us that the issue of  
17 privacy in telecommunications has been one with a long  
18 history. I can remember back when I was a young boy,  
19 we still had a party line at my house, and we were  
20 very concerned about whether someone at another home  
21 was listening in on our conversation. And that was  
22 many years ago. And privacy was a concern then, and  
23 privacy continues to be of certain now. It's a  
24 different kind of privacy, perhaps, but still one of  
25 just as much importance.

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1 And I believe that Qwest, like a doctor or  
2 lawyer or even our videotape store, has a  
3 responsibility to protect information that we would  
4 find sensitive that we want to protect from the prying  
5 eyes of our neighbors and others. And Qwest is  
6 assuring us -- and just listening to some of the  
7 presentation -- that they have in place a limitation  
8 on the types of information that would be shared and  
9 how it would be shared, and I take them at their word  
10 on that, that that is the case.

11 But I believe that what we need to look for  
12 is a community standard. What would a rational person  
13 -- what would rational people expect to be protected  
14 and expect to be private. And that we establish that  
15 by rule as what we expect in Arizona. And I would  
16 like to see us proceed on rules of that type. Again,  
17 I think there's a delicate balance between a free  
18 market and a free people that have a right to privacy.  
19 That balance point is what we want to achieve. And I  
20 believe that we should ask Qwest and others to work  
21 with us in that regard and members of the public to  
22 find that balance point for Arizona and establish it  
23 by rule and proceed from there.

24 Thank you, Mr. Chairman.

25 CHMN. MUNDELL: Thank you, Representative

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1 Hatch-Miller, for your comments. Thank you very much.  
2 Mr. Smith, you can go ahead and come back to  
3 the podium. I'm sure we have a number of questions  
4 for you.

5 COM. IRVIN: Mr. Chairman, I have a couple of  
6 questions, very basic questions, if I could, sir.

7 CHMN. MUNDELL: Certainly.

8 COM. IRVIN: Mr. Smith, a couple of points  
9 that I found that -- and very basic, I leave my  
10 colleagues to ask the legal questions as they have a  
11 legal background. I have more of a business  
12 background, so I'll cut to the chase.

13 You know what has amazed me, and even in your  
14 presentation and in the notices and even the notices  
15 that I've got here -- and I've got a bunch of them --  
16 is to get Qwest to identify what specific information  
17 they're disseminating is like pulling teeth. You, in  
18 your presentation to the Commission, identified and  
19 said, we're not going to use information, but you  
20 never said what information it is. I think  
21 Commissioner Spitzer pointed out, and correctly so,  
22 that if Qwest and their family buys I think he used  
23 the expression Peter Piper or Pizza Hut, and he uses a  
24 different pizza house, is he going to start getting  
25 phone calls to solicit that? You've got some very

1 And the public, as they sit today, still has no idea  
2 what information -- I mean, there is basic telephone  
3 information that is -- I would concur that's open  
4 access, but there's other information: when calls are  
5 made, what special services you're using on the phone,  
6 what Internet services, all kinds of things. That is  
7 proprietary, and my colleagues have pointed that out.

8 And that's a long question; but you haven't  
9 addressed those yet, and I think the public deserves  
10 to have answers.

11 MR. SMITH: Commissioner, I appreciate your  
12 questions.

13 Let me first address the notion that we are  
14 in a unique position. Certainly on a historical  
15 basis, there was not much competition within the  
16 telecommunications industry. It's my understanding in  
17 talking with Teresa Wahlert -- and I'm sure that you  
18 can confirm this -- that we have over 100 certificated  
19 providers in the state of Arizona. As somebody that  
20 is responsible for the financial success of the  
21 consumer division, I can tell you specifically that we  
22 understand the competition that exists between  
23 ourselves and Cox, between ourselves and AT&T in the  
24 provision of local services. So we operate in what is  
25 an increasingly competitive marketplace where I

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1 sensitive information.

2 I think Representative Hatch-Miller pointed  
3 out that the sensitivity of these -- and what I'm  
4 getting at is to point out, the difference is, your  
5 utility bill is a bill that citizens in Arizona use to  
6 identify and get library cards and schools use to  
7 identify that you qualify to go to school in that  
8 particular school district. So that information is  
9 accurate. Whereas, all the other information from all  
10 the other entities that you put may or may not be  
11 accurate.

12 And one of the differences that you pointed  
13 out, and, again, I have a problem with it, in all your  
14 examples, AT&T, Cox, the bank, they're all unregulated  
15 entities that consumers have choice. The consumers in  
16 Arizona, as we sit today, do not have choice of who  
17 provides them with dial tone. And Qwest is --  
18 although they may not admit it -- but Qwest is a  
19 wholly regulated entity in this state. And I think  
20 that is part of mine and my colleagues' frustrations  
21 up here. And I find it extremely dissatisfying that  
22 in your comments, you drew a distinction to try to  
23 throw the Commission off, but the distinction is  
24 regulated versus unregulated, and you are regulated.  
25 And you still haven't identified what those items are.

1 believe that we have to have an opportunity, as do  
2 other providers of services, to market our services in  
3 a fashion that is No. 1, reasonable, certainly  
4 protects the reasonable expectations of privacy, but  
5 that is on a par with what other telecommunications  
6 providers are permitted to do in providing their own  
7 services.

8 Now, with respect to the information -- and I  
9 would ask our counsel, given an opportunity, to  
10 specifically address how the Federal Communications  
11 Commission would define customer proprietary network  
12 information because specifically that's what we're  
13 dealing with here. But as a basic proposition, it is  
14 that information that suggests what kind of services  
15 that you subscribe to and how you utilize those  
16 services.

17 Now, I use --

18 CHMN. MUNDELL: Mr. Smith, let me cut to the  
19 quick. Does that include who you call, when you call,  
20 where you call, how often you call? Let's just talk  
21 basic English here so everyone can understand it.

22 Who you call?

23 MR. SMITH: Yes.

24 CHMN. MUNDELL: Where you call?

25 MR. SMITH: Yes.

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1 CHMN. MUNDELL: When you call?  
2 MR. SMITH: Yes.  
3 CHMN. MUNDELL: How often you call?  
4 MR. SMITH: Yes.  
5 CHMN. MUNDELL: Thank you.  
6 MR. SMITH: That information is all included  
7 within the purview of customer proprietary network  
8 information.  
9 COM. IRVIN: And, Mr. Smith -- excuse me,  
10 sir.  
11 MR. SMITH: If I could respond to --  
12 COM. IRVIN: Let me add --  
13 CHMN. MUNDELL: One at a time, gentlemen.  
14 COM. IRVIN: Let me add one more caveat to  
15 that. You've now told Commission Mundell that -- and  
16 that's what I suspected. But to the general public,  
17 they don't have easy access to the FCC rules. Why  
18 would the company not be more honest -- and I think  
19 the Attorney General pointed it out -- and forthright  
20 and come right out and say, these are, in fact, the  
21 type of services and information we're asking for.  
22 Instead, you hide under the cloak of saying it's under  
23 FCC rule or some obscure regulation that we as  
24 regulators and you in the industry know what it is,  
25 but John Q. Citizen doesn't know, and it's frustrating

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1 and annoying to the consumer, and they're put at a  
2 loss.  
3 And I have to agree with the Attorney General  
4 that you're opening -- that the opening statement is  
5 even more accented that we think this is one reason  
6 you trust us. I think, with the Attorney General,  
7 it's a reason the public doesn't trust Qwest, is  
8 because they are being disingenuous and they're hiding  
9 when the truth is a better answer. I'm sorry for  
10 interrupting you, but --  
11 MR. SMITH: Mr. Commissioner, I do not agree  
12 with you that we are being disingenuous. I think, as  
13 a matter of fact, our disclosure was considerably more  
14 lengthy than that that has customarily gone out from  
15 other communications companies, and the vast majority  
16 of communication companies have sent out these  
17 notices.  
18 I want to make very clear what our policies  
19 and practices are. Again, I want to reiterate that I  
20 understand, Mr. Chairman, that the kind of information  
21 that we know is incorporated into customer proprietary  
22 network information is very sensitive, but I want to  
23 make clear that that's why we have very strictly  
24 limited its use. We do not provide it to third  
25 parties for their use in telemarketing practices or

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1 the selling of their services, and we provide  
2 customers an opportunity to suggest that we not  
3 utilize their information even within our family of  
4 customers.  
5 CHMN. MUNDELL: Let me ask you this question,  
6 Mr. Smith. Who is your family of customers -- of  
7 companies? You've used that terms in your notice, and  
8 you've used it here today. What is Qwest's family of  
9 companies and where can that list be found so that  
10 myself and --  
11 COM. SPITZER: Excellent question.  
12 CHMN. MUNDELL: Thank you, Commissioner  
13 Spitzer.  
14 MR. SMITH: I believe that actually in the  
15 notice, there was a discussion of the family of  
16 customers. We have our Qwest wireless division that  
17 provides cellular and PCS services. We have Qwest  
18 Dex, which is our directory publishing business. We  
19 have our Internet business that provides Internet  
20 access services. We have our local business, which  
21 is -- I am a part of in the consumer division. And we  
22 have our long distance company, as well. Those are  
23 the Qwest family of companies.  
24 CHMN. MUNDELL: So other than those that you  
25 just named, there's no other family of Qwest companies

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1 that you'll be disseminating this information to?  
2 MR. SMITH: Yes.  
3 CHMN. MUNDELL: Let me ask this question,  
4 then: When that particular family of companies  
5 changes, which it probably will in the future, how  
6 will that information be given to the public?  
7 MR. SMITH: The intent of the notice was to  
8 suggest that we were going to be sharing this  
9 information within the Qwest family of companies. And  
10 I believe that that notice would indicate that if  
11 there were another company that happened to be created  
12 for the provision of a service that I can't  
13 anticipate, that the notice already indicated that  
14 that information would be shared and the customers  
15 have an opportunity to have us not share that  
16 information if they show choose.  
17 CHMN. MUNDELL: And then the term -- I think  
18 Commissioner Spitzer started to ask you the question,  
19 and I wanted to get to the representative. What does  
20 commercially reasonable mean to Qwest?  
21 MR. SMITH: Again, as I stated in my  
22 introductory comments, I think -- and I'm in agreement  
23 with the Commission that commercially reasonable is  
24 not well understood. We would share information with  
25 third parties where it is critical for the delivery of

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1 a service. And I use the example that if we sold a  
2 high bandwidth line and a customer had a particular  
3 Internet service provider, we might have to indicate  
4 the speed of that line to the Internet service  
5 provider in order to have that service completed in a  
6 reasonable fashion.

7 We might have to share information with a  
8 party that is selling on our behalf. We have our own  
9 sales agents, but we also contract for sales agents.  
10 If they utilize account information for selling at our  
11 behest as our authorized agent, we do not allow them  
12 to use that information for any purpose that goes  
13 beyond specifically acting as an agent on our behalf.

14 We might utilize that information if you  
15 decided to subscribe to a competitor of ours at the  
16 local level. We would share that account information  
17 because you have suggested that that's who you want to  
18 be served by. If we sold a portion of the business to  
19 another party where you're continuing to receive  
20 service might require that information be available to  
21 the person purchasing or the entity purchasing that  
22 part of the business. That would be another example.

23 I cannot run beyond those examples,  
24 Mr. Chairman, to suggest to you what would be  
25 commercially reasonable. I just want to state clearly

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1 companies, but they're a separate entity that you, in  
2 fact, have provided information to.

3 MR. SMITH: That is operating as an agent for  
4 sales and the delivery of Qwest services.

5 CHMN. MUNDELL: Let me ask you this: Has  
6 any -- well, okay.

7 COM. IRVIN: Mr. Chairman, can I follow up on  
8 a question. Because you've alluded to a problem, and,  
9 again, I think -- I think trying to get answers is  
10 like pulling teeth.

11 But let me go to a letter in the response  
12 that Ms. Wahlert wrote to me. She wrote -- and this  
13 is on the shared information. It says: With the  
14 family of companies. And then it specifically states  
15 here: And others authorized to help customers get  
16 Qwest service.

17 Who is that? That's not part of the Qwest  
18 family.

19 MR. SMITH: Let me again utilize the example,  
20 Mr. Commissioner, of us providing a high bandwidth  
21 line, and you have subscribed to an Internet access  
22 provider. We would provide that Internet access  
23 provider the characteristics of that particular  
24 circuit so that service might be delivered. That  
25 would be an illustration.

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1 that we are not selling this information to third  
2 parties unaffiliated that want to utilize this  
3 information for their own marketing purpose.

4 CHMN. MUNDELL: Let me ask you this,  
5 Mr. Smith -- and certainly correct me if I'm wrong.  
6 Hasn't some of this information been either given or  
7 sold to Microsoft, your net providers? Explain that  
8 to me.

9 MR. SMITH: It has not been sold to  
10 Microsoft. Microsoft has a co-marketing arrangement  
11 with us. They sell a combined offer of DSL service  
12 and their MSN Internet service. They can utilize any  
13 account information only for the purpose of providing  
14 that combined package that incorporates a Qwest  
15 offering.

16 CHMN. MUNDELL: So they're not --

17 MR. SMITH: Let me be clear, Mr. Chairman.  
18 They could not take our customer information and  
19 decide that they wanted to sell the next version of  
20 Windows and utilize their list in that kind of a  
21 fashion. That would be completely contrary to our  
22 agreement with them, our contractual agreement with  
23 them.

24 CHMN. MUNDELL: So they're not a member of,  
25 obviously, to use the term of Qwest family of

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1 And understand, I can't give you a litany of  
2 examples because we just have sent out this notice.  
3 We are not utilizing this information in this fashion.  
4 But where it is critical for us to share this  
5 information with someone that is aiding us in the  
6 delivery of service, those are the circumstances under  
7 which this information would be shared and not beyond  
8 that. We would not give permission to them to utilize  
9 it for other purposes.

10 COM. IRVIN: We have an issue of trust. And  
11 your family is kind of like a rabbit. It's growing as  
12 we speak here today.

13 And the other comment I've got, again, to  
14 follow up with the Chairman's questions, is "in the  
15 future, we may change our structure and enter new  
16 businesses." Your family just got bigger. The public  
17 doesn't know.

18 And the other thing that you haven't  
19 described, and I know the Chairman mentioned it on the  
20 radio this morning -- and I'll take a little bit of  
21 his thunder, and he can follow up with it -- is what  
22 assurances does the public have that this information  
23 is even protected? Because when they call in -- and I  
24 just had my chief of staff call, and he did get  
25 through to your number, so I'll give you credit for

13 (Pages 46 to 49)

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1 that.

2 MR. SMITH: Was it in three seconds?

3 COM. IRVIN: I don't know how long. He  
4 didn't tell me that. He said he did get through and  
5 he did verify the opt-out. So he's opted out. He's  
6 done better than me on it. Anyway, unfortunately, and  
7 this is a complaint that I've heard from many  
8 constituents, that there's been no confirmation given  
9 that the phone company has even received the  
10 information, that the phone company has even given a  
11 confidentiality or notification that this information  
12 is now protected or anything.

13 And quite frankly -- and I'll pick up on the  
14 Attorney General -- outside of your word, as  
15 Representative Hatch-Miller mentioned, which I think  
16 many consumers are suspect of, what assurances do  
17 consumers have that their proprietary information is  
18 protected? When Qwest files information at this  
19 Commission, they file information under proprietary  
20 rights, and this Commission honors those rights. I,  
21 as a consumer and as a subscriber to Qwest services,  
22 because I have no choice, would expect the same thing,  
23 but I'm hearing a different message from Qwest today.  
24 And as a consumer, I'm concerned. As a Commissioner,  
25 I'm irate.

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1 MR. SMITH: Commissioner, I believe that you  
2 had three different questions.

3 First of all, I am hopeful that Qwest as a  
4 company would grow and would offer additional services  
5 that consumers would find valuable in a competitive  
6 marketplace. That is a principle of business. The  
7 way that you do that is you come to the marketplace  
8 with valuable services. And valuable in the sense  
9 that customers perceive them to be of value. So that  
10 is very much my objective. I believe that's what  
11 American business is about.

12 Secondly, in terms of confirmation, we will  
13 be confirming with every customer that chooses to  
14 opt-out the fact that they have chosen to opt-out.  
15 And we're building that mechanism, and we'll be happy  
16 to provide the Commission and the Commission Staff  
17 with precisely what that procedure will be.

18 CHMN. MUNDELL: So you'll be sending  
19 something in writing -- it seems to me that you can  
20 send out all your advertising on a regular basis, you  
21 get inundated with it, that someone could sit down and  
22 develop a strategy to send out a confirmation letter,  
23 put it in the bill stuffing so it doesn't cost any  
24 more postage, put a little star on the billing that  
25 indicates you've opted out. It seems to me pretty

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1 easy to do. I'm just giving some suggestions here off  
2 the top of my head. The person doesn't have Internet  
3 capability. You put it in a fax. When you send your  
4 bill out, you put in some kind of indication they've  
5 opted out.

6 And then I have a question, and first of all  
7 I'll preface: Are you sending out the notice also in  
8 Spanish?

9 MR. SMITH: The original notice?

10 CHMN. MUNDELL: Or the subsequent one that  
11 you said you're going to be sending out.

12 MR. SMITH: Again, we have not yet -- and I  
13 appreciate your suggestions as to methodology,  
14 Mr. Chairman. As I indicated, we have not solidified  
15 what the process is going to be for confirming with  
16 our customers, but we will do it in a fashion which  
17 assures to the greatest extent possible that they  
18 understand that their request has been received and  
19 that it has been honored.

20 CHMN. MUNDELL: We know in Arizona we have a  
21 number of Spanish-speaking people. And so Qwest  
22 doesn't feel like we're picking on you guys, because I  
23 know what's how you feel, we've recently required  
24 Southwest Gas to send out their notices in Spanish.  
25 And I look at this, and I read it. If I -- looking at

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1 this, not only is it misleading in my opinion, as I  
2 said earlier, it says, don't worry about this because  
3 it doesn't impact your Qwest billing and trash it.  
4 And then I made a note to myself, it seems to me it  
5 should be in Spanish, also.

6 COM. SPITZER: We'll start with English  
7 first, Mr. Chairman.

8 CHMN. MUNDELL: That's good. But we ought to  
9 move along and make sure that we have informed  
10 consent. It seems to me that the basis of a notice  
11 requirement -- and if you're saying that you're going  
12 to use the opt-out that it ought to be -- a person  
13 ought to have informed consent to make an intelligent  
14 decision.

15 And to the notice, I wanted to ask you a  
16 question. You're not suggesting -- or maybe you  
17 were -- that the wording in the notice is what was  
18 required by the FCC. I mean, you had some leeway  
19 because I've seen notices from SBC and from some other  
20 providers. So just to make sure the record is clear,  
21 this verbiage that you used was not drafted by the  
22 FCC, it's what you all came up with at Qwest.

23 MR. SMITH: That's correct, Mr. Chairman.

24 CHMN. MUNDELL: I just wanted to be sure the  
25 record was clear.

14 (Pages 50 to 53)

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1 MR. SMITH: I believe Commissioner Irvin had  
2 another portion of the question that he had asked; and  
3 that is, what assurance do we have that Qwest is trust  
4 worthy on a long-term basis in terms of the  
5 utilization of this information.

6 And my response to that is: I operate in a  
7 competitive marketplace. And if I violate the trust  
8 of my customers, I'm not in business anymore. I mean,  
9 that's ultimately the determination for me. If I do  
10 not understand honor and respect, the requirements  
11 that my customers have for the protection of their  
12 information, they do, in fact, have choices available  
13 to them. They will take those choices, and I deserve  
14 to have them take those choices. That's my assurance  
15 as a business person in a competitive market.

16 COM. IRVIN: Mr. Smith, if we had a  
17 competitive marketplace, I would concur with you. But  
18 much to my colleague Commissioner Spitzer's ridicule  
19 from time to time, I live in north Scottsdale for  
20 better or for worse. I don't have a choice of another  
21 local service provider. So where do I go if I believe  
22 you've violated my trust or I don't like this policy,  
23 how do I get local dial tone?

24 MR. SMITH: I could --

25 COM. IRVIN: The answer is I don't.

1 comment.

2 CHMN. MUNDELL: Mr. Smith, let me just  
3 interject something for the audience.

4 I think it's important to reflect on how  
5 lucky we are to live in this country where we have  
6 freedom of assembly, freedom of speech, but we need to  
7 be civil. And I will let everyone have an opportunity  
8 to speak, but please don't shout out. We make  
9 decisions in this country in a democracy based on  
10 information and not at the point of a gun. So I would  
11 appreciate the audience showing some civility and  
12 respect. We've called this meeting because we are  
13 concerned about your privacy, but please don't shout  
14 out.

15 Thank you.

16 COM. IRVIN: Thank you, Mr. Chairman.

17 CHMN. MUNDELL: Commissioner Spitzer.

18 COM. SPITZER: Thank you, Mr. Chairman.

19 I'm going to reserve some of the legal issues  
20 to your attorney folks, and maybe I'll stick with the  
21 marketing just for the time being.

22 Qwest chose to litigate -- elected to  
23 litigate the FCC opt-in and reverse it for an opt-out.

24 MR. SMITH: Its predecessor company, U S  
25 WEST, did, yes, sir.

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1 MR. SMITH: Well, the answer is -- and I can  
2 give you facts and data on this -- increasingly,  
3 people decide that they'll get their local dial tone  
4 off of a wireless service. I have many customers  
5 that --

6 COM. IRVIN: Mr. Smith, I want hard wire  
7 service. I want the phone service. I'm entitled  
8 to -- it's a policy of this state that I am entitled  
9 to have access to that. I think that is a cop-out of  
10 an answer to give me I can go to wireless. Yeah, I  
11 have wireless phones now, too.

12 MR. SMITH: Mr. Commissioner, with due  
13 respect, I don't think that it is a cop-out.

14 (Shouting from audience.)

15 CHMN. MUNDELL: Wait. Wait.

16 MR. SMITH: This is an increasingly  
17 competitive environment. If I establish a reputation  
18 for this business that would suggest when service is  
19 available to you and it surely will, just like it's  
20 available for so many tens and hundreds of thousands  
21 of subscribers from Cox Communications in this  
22 community, I can't have these kinds of policies and  
23 expect to have a healthy business. That's it, pure  
24 and simple. That's my motivation.

25 COM. IRVIN: I would agree with that last

1 COM. SPITZER: And I'm assuming that there  
2 were business reasons for that. Lawyers typically  
3 don't take cases without some direction from  
4 management, so I'm assuming there was a management  
5 determination that opt-in -- or opt-out was better for  
6 the company from a marketing point of view; is that  
7 correct?

8 MR. SMITH: That is correct.

9 COM. SPITZER: And in the Tenth Circuit  
10 opinion -- now, this is a majority opinion that struck  
11 down opt-in -- explained by opt-in in the Court's view  
12 restricted the company's marketing opportunities.  
13 You're familiar with that?

14 MR. SMITH: I am. And I know that you're  
15 versed in this decision, Commissioner. I believe that  
16 the decision was that the Court believed in the free  
17 flow of information within a free economic system to  
18 ensure the efficient delivery of products and  
19 services. I believe that was the fundamental theory  
20 of the decision.

21 COM. SPITZER: And that the company had  
22 performed surveys under an opt-in version that showed  
23 consumers were reluctant to dispense with their  
24 privacy rights. Wasn't that part of the Court's  
25 opinion?

15 (Pages 54 to 57)



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1 MR. SMITH: I think beyond the statement that  
2 I just made, perhaps that question would best go to  
3 counsel.

4 COM. SPITZER: We've seen a firestorm here,  
5 and I'll tell you, I heard it at my Rotary Club  
6 Friday. I was sitting having lunch, and I was a  
7 captive audience. And I heard it from liberal  
8 Democrats, I heard from conservative Republicans. The  
9 issue of privacy seems to cut across party and  
10 philosophical lines, and I think that's a good thing.

11 Don't the problems with your unanticipated  
12 response or the citizens of Arizona causing a flooding  
13 of the lines and causing the company to hire more  
14 folks and causing the company to deal with input,  
15 causing the company to go out and bring in trained  
16 individuals to deal with this narrow issue, causing  
17 the company to consider a second insert on the  
18 privacy, causing the company to extend the deadline,  
19 causing the company to now consider how to in an  
20 economically feasible way confirm that folks have  
21 opted out, doesn't this all make the case for opt-in?  
22 And is the company going to reconsider this fiasco?

23 MR. SMITH: The company has taken steps, many  
24 of which you have pointed out, to deal with a  
25 situation that we did not properly anticipate, part of

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1 seen all the correspondence, and I know that the  
2 company's raised Gramm-Leach-Bliley, financial  
3 institutions. You understand how a regulated utility  
4 which is an essential -- a utility is by definition  
5 ubiquitous and essential, is different than some other  
6 commercial transaction.

7 MR. SMITH: I suspect because I get to be on  
8 the front lines of what I consider to be a competitive  
9 business on a daily basis that you and I have a  
10 different view of that, and I believe that I have to  
11 have available to me practices that are available to  
12 others across industry in competitive marketplaces.

13 But, again, this belies the notion that  
14 somehow we are -- even if you agree with the  
15 characterization of us as a utility and somehow  
16 differential that we are somehow abusing the  
17 utilization, that is not the case. We do not sell  
18 this information. We do not allow third parties to  
19 utilize it in their telemarketing practices. That  
20 simply is not the case.

21 COM. SPITZER: But you understand how your  
22 customers could have a different view. That they  
23 would view this utility as different than buying a  
24 subscription to Field & Stream magazine. That they  
25 would have a different expectation of privacy accorded

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1 which was caused by the questions that were raised in  
2 the manner in which we put forward our notice.

3 The company is very interested in ensuring  
4 that consumers understand -- have the opportunity to  
5 opt-out. The fact is that thus far, we've seen  
6 somewhere between 3 and 4 percent of customers  
7 opt-out.

8 COM. SPITZER: To date?

9 MR. SMITH: To date. That in spite of the  
10 fact that as we are all very well aware, given this  
11 open meeting and given the coverage of the media --  
12 there has been a great deal. As you sat in your  
13 Rotary Club, a great deal of understanding of this  
14 opportunity. I'm happy to have people have that  
15 opportunity. It's why we're very willing to extend  
16 the deadline.

17 To your question specifically, Commissioner  
18 Spitzer, we do not intend to put forward an opt-in  
19 provision, and we feel very comfortable, given the  
20 Court's affirmation of our view and given the common  
21 practice in American industry, that an opt-out  
22 opportunity with appropriate notification is the right  
23 course to take.

24 COM. SPITZER: Mr. Chairman, you understand  
25 the distinction, I raised it in my open remarks. I've

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1 their decision to have dial tone as opposed to their  
2 decision to go out and buy a magazine.

3 MR. SMITH: Being a marketing and  
4 salesperson, Commissioner, I understand very well the  
5 differences in viewpoints in almost every regard in  
6 the customers that I serve.

7 COM. SPITZER: And you were surprised -- you  
8 say you didn't anticipate this firestorm. You're  
9 telling this Commission today that the company is  
10 surprised that the people feel the way they do?

11 MR. SMITH: I am not at all surprised that  
12 people have a very genuine and heartfelt interest in  
13 the privacy of information that they deem to be  
14 confidential. In fact, I was surprised and did not  
15 anticipate the volume of interest that we have  
16 received. The fact of the matter is, those that went  
17 before us did not receive the kind of interest that  
18 has been shown by way of example in the state of  
19 Arizona. Be that as it may, we're looking at about a  
20 3 percent interest in opt-out thus far. But none of  
21 that should be taken to mean that I do not understand  
22 people's absolutely legitimate requirements to have  
23 the confidentiality of their personal information  
24 protected. Well understood and protected. I am in  
25 wholehearted agreement with that.

16 (Pages 58 to 61)

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1 COM. SPITZER: 271. The Attorney General  
2 alluded to that. In terms of the services offered by  
3 the company on a going-forward hypothetical basis,  
4 that would extent the Qwest family of companies, would  
5 it not, some?

6 MR. SMITH: Yes, indeed it would.

7 COM. SPITZER: So my current bill -- I have a  
8 competitor of Qwest's for long distance that is being  
9 billed through Qwest. That information, the fact that  
10 I call my mom in Philadelphia every Sunday night,  
11 becomes part of Qwest's marketing endeavors under a  
12 post-271 regime. Is that what you're planning?

13 MR. SMITH: I do not have specific plans.  
14 It's now under consideration how we would market to  
15 our customers. But what I can assure this Commission  
16 is that we will be giving customers a far better deal  
17 than incumbents are now providing in this marketplace  
18 once we enter the long distance arena.

19 COM. SPITZER: So, Mr. Chairman, you're  
20 saying that you offer a great deal. So the answer to  
21 my question is you're going to take my customer  
22 proprietary information as a marketing deal and  
23 post-271 issue and from a privacy point of view, is  
24 that something that this Commission ought to consider  
25 in 271? Is that a buried land mine in the 271

1 dissenting judge, who did not attend the University of  
2 Michigan Law School, I thought was extraordinary in  
3 talking about the competition issue. Now, what you've  
4 just said is in a hypothetical post-271 approval  
5 world, you've got a competitive advantage over all the  
6 other long distance competitors because you have my  
7 customer proprietary network information, and none of  
8 the other long distance competitors do. So what  
9 you're suggesting is you're making the argument that  
10 this is anti-competitive, are you not?

11 CHMN. MUNDELL: Let me jump in for just a  
12 second because this is a great dialogue back and  
13 forth, and this is some great questions; but I'm going  
14 to ask our counsel, because of the open meeting  
15 notice, this discussion should probably take place in  
16 the 271 docket as opposed to here. I mean, those are  
17 great questions. I had some of the same ones about  
18 you can't have it both ways. And I was going to say,  
19 are the competitors going to get the same information,  
20 also, which opens a whole new ball of wax, and I don't  
21 want to go there today.

22 COM. SPITZER: Thank you, Mr. Chairman, I  
23 stand corrected.

24 Final question on this whole marketing issue:  
25 What has been the -- the Attorney General said that

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1 process?

2 MR. SMITH: I would not refer to it as a land  
3 mine. I do want to make clear that under the notice  
4 that was sent and under the FCC CPNI rules, if you  
5 choose not to opt-out, we could use customer  
6 proprietary network information in our marketing  
7 practices as we enter into the long distance business.  
8 But, again, I would put forward the question of what  
9 utility is that to customers. If we are able to  
10 determine by way of example that you are a heavy user  
11 of long distance services between Phoenix and Arizona  
12 and that we want to provide you a special rate for  
13 that calling or a special rate for a particular time  
14 of the day -- or, as an example, a very popular  
15 offering that MCI came forward with years ago, Friends  
16 & Family, where there is an opportunity for commonly  
17 called numbers for you to receive a very beneficial  
18 rate, I think that that is of great benefit, and I  
19 don't view it to be abusive. We obviously are not  
20 going to put you on a plan without your concurrence,  
21 but --

22 COM. SPITZER: I understand, but -- not only  
23 looking at the privacy issue, but there was a  
24 competitive issue that was raised before the Tenth  
25 Circuit. And, frankly, with all due respect to the

1 when she called in to opt-out, she received some  
2 solicitations from your wireless folks, wireless  
3 products. Given the -- again, the firestorm in this  
4 state regarding people's interest in privacy, I'm sure  
5 you track this on a daily basis. How have your  
6 marketing efforts been going to Arizona?

7 MR. SMITH: I've got to say that just as a  
8 general proposition, the economy is soft in all of the  
9 places we serve and business is down.

10 COM. SPITZER: In the last couple of weeks  
11 since it's hit the papers, Saturday -- what was it,  
12 the 4th?

13 MR. SMITH: I can't give you the  
14 Arizona-specific information. And business has been  
15 on a par with what I found it to be in December.

16 But I want to make clear that the people  
17 that -- the routing that we're now going through --  
18 first of all, we have up as of about 9:30 last night  
19 this opportunity to call in on an automated basis and  
20 opt-out and ultimately receive a confirmation. So  
21 that is dealing only with the CPNI opt-out position.  
22 Also, these 290 people that are on board, they are  
23 dealing only with information that is related to the  
24 CPNI opt-out, not a selling practice. We have not  
25 trained them in selling.

17 (Pages 62 to 65)

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1 I can't -- Mr. Commissioner, with 3,000  
2 people on the front line, I can't tell you that there  
3 has not been a circumstance where somebody attempted  
4 to sell a wireless offering if they got into our  
5 business office and wanted to opt-out. But I can tell  
6 you that the vast majority of calls are going to CPNI  
7 specialists that are dealing only with the opt-out  
8 equation.

9 COM. SPITZER: And bearing in mind that I  
10 think the company has an obligation given the  
11 procedural context of this, the company -- your  
12 company, not some other telecommunications company,  
13 challenged the FCC rule and through good lawyering was  
14 able to obtain its reversal and eliminate opt-in, so  
15 we live in an opt-out world.

16 The Central Hudson case, there was a  
17 statement by the Supreme Court that to eliminate  
18 falsehood and fallacy, the remedy is more speech, not  
19 enforced silence. In that regard, what is the company  
20 going to do to educate the public about the extent of  
21 CPNI and about their rights under federal law as  
22 interpreted by the company?

23 MR. SMITH: Well, certainly through the  
24 notices that are being sent out that have been sent  
25 out in our bill insert, certainly through the media

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1 customers have the right to consent. And given the  
2 confusion and the difficulties -- and I elaborated  
3 them and I'm not going to do it again -- you've  
4 articulated some of the difficulties in administering  
5 an opt-out process, which seemed fundamentally in  
6 conflict with the Act of Congress that said, it's the  
7 customers that have the right to privacy. And an  
8 opt-out puts the burden on the customer. And for all  
9 the reasons that we've spent a lot of time discussing,  
10 that is a difficult burden to impose. It's difficult  
11 for the customer, and it's difficult for the company.

12 Is your company so insistent, so dogged in  
13 its determination to maintain an opt-out and put the  
14 burden on the customer that that is a decision no  
15 matter what kind of outcry is provoked in this state  
16 that the company is insistent on defending to the  
17 bitter throes?

18 MR. SMITH: I am in agreement with the  
19 determination, Mr. Commissioner, that was made by the  
20 Tenth Circuit. What I am determined to do is to avail  
21 this company of the same kind of marketing and selling  
22 practices that are generally available to customers  
23 engaging in free enterprise in this country and  
24 particularly in the telecommunications industry. I  
25 think it's critical that we have that opportunity, and

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1 coverage and certainly through our statements of  
2 clarification making very clear that we do not sell  
3 this information to third parties.

4 CHMN. MUNDELL: You're going to say  
5 "important privacy information" in your notice as  
6 opposed to "this doesn't impact your Qwest billing"?

7 MR. SMITH: There has been an implication,  
8 Mr. Chairman, that our design was such that we hoped  
9 that people would not read the notice. I can tell you  
10 as the head of this organization, that was absolutely  
11 not the case. There was not a requirement to put any  
12 indication by way of example on the outside of the  
13 envelopes where the bill insert was placed. We did  
14 so.

15 Again, our decisions here have not been to  
16 confuse and obfuscate. I understand that some  
17 confusion has been created. We are owning that  
18 confusion and seeking to clarify. But I want to make  
19 clear that we appreciate people's desire to understand  
20 their privacy rights and to exercise the choices that  
21 they are given, and that was our intent.

22 COM. SPITZER: I want to be absolutely clear,  
23 the concept of waiver is a voluntary, educated, and  
24 informed. The language of the statute -- and Qwest  
25 did not challenge the statute. And the statute said,

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1 that was the opportunity that was supported on a  
2 consistent basis by the Tenth Circuit decision. And  
3 though I respect your difference in viewpoint, I for  
4 one am in agreement with the decision that was  
5 rendered by the Tenth Circuit.

6 COM. SPITZER: So then the company -- let me  
7 try it again. The company is implacable in its  
8 determination to maintain opt-out and will resist all  
9 attempts to reverse that?

10 MR. SMITH: Implacable is your word, not  
11 mine. We were in agreement with the Tenth Circuit  
12 decision, and we do not intend to operate on an opt-in  
13 basis in the utilization of customer proprietary  
14 network information.

15 CHMN. MUNDELL: Let me try it a different  
16 way. The Tenth Circuit decision doesn't prevent a  
17 company, doesn't prevent Qwest from having an opt-in  
18 provision.

19 MR. SMITH: That is correct. And we intend  
20 not to have one.

21 CHMN. MUNDELL: We understand that. But if  
22 you wanted to, you could.

23 MR. SMITH: Oh, absolutely.

24 CHMN. MUNDELL: Don't rely on that Tenth  
25 Circuit to somehow imply --

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1 MR. SMITH: And --  
2 CHMN. MUNDELL: Let me finish. One at a time  
3 because we have a court reporter here.  
4 That Tenth Circuit decision doesn't prevent  
5 the company from having an opt-in provision.  
6 MR. SMITH: That is correct.  
7 CHMN. MUNDELL: And let me ask you this to  
8 follow up on what Commissioner Spitzer asked: You're  
9 not willing to stop the release of this information  
10 until the FCC completes their new rulemaking?  
11 MR. SMITH: We have gone far beyond the  
12 requirements of the FCC and have extended until March  
13 29th any utilization of this information within the  
14 family of Qwest companies, and that is our stated  
15 policy.  
16 CHMN. MUNDELL: So let's make it clear so  
17 everybody understands. The FCC has started a new  
18 rulemaking process. They've closed the comment  
19 period. But having said that in the Court -- and  
20 maybe this is better for your counsel. As I read that  
21 case, also, there's a possibility that a  
22 constitutionally permissible opt-in provision would be  
23 appropriate and it would not violate the Constitution.  
24 That's what the FCC is look at right now, to determine  
25 whether or not a flexible opt-in provision is

1 regard to every other communications company in this  
2 country.  
3 COM. IRVIN: I wholeheartedly disagree with  
4 that, but we won't get into that discussion.  
5 CHMN. MUNDELL: Please don't.  
6 COM. IRVIN: Following Commissioner Spitzer,  
7 to your question on economics, I'm reading from an  
8 article from the Tucson Republic that Qwest is  
9 ultimately reducing its work force by some 55,000  
10 employees to meet reduced customer demand.  
11 CHMN. MUNDELL: Let's go ahead and --  
12 MR. SMITH: We are not reducing our work  
13 force by 55,000. I want to be very clear on that.  
14 COM. IRVIN: I just read what the newspapers  
15 say.  
16 MR. SMITH: They are inaccurate.  
17 CHMN. MUNDELL: Let's go ahead and take a  
18 ten-minute recess. The court reporter probably needs  
19 a break. I'll then go back and take public comment,  
20 and then we'll have additional questions for Qwest  
21 counsel. So we'll stand in recess for ten minutes.  
22 (Recess taken.)  
23 CHMN. MUNDELL: Let's go ahead and go back on  
24 the record in the Qwest dissemination of its  
25 customers' information to its affiliates and others.

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1 constitutional. Is that correct?  
2 MR. SMITH: You should address that to  
3 counsel.  
4 CHMN. MUNDELL: I'll ask your counsel that,  
5 then, because, again, you can certainly do an opt-in  
6 provision if you wanted to, and you're not prevented  
7 by the Court decision from doing that. And I guess --  
8 MR. SMITH: Any business in this country  
9 could, Mr. Chairman, and I believe that they do not.  
10 COM. IRVIN: Let me follow up on that. I'm  
11 going to make an assumption that the FCC is going to  
12 require an opt-in and it may or may not be challenged  
13 legally. Are you going to give back that information?  
14 You've got that information and you're going to use  
15 it, aren't you.  
16 MR. SMITH: We will comply with any  
17 legitimate order of the Federal Communications  
18 Commission or any court, Mr. Commissioner.  
19 COM. IRVIN: See, I would think if you were a  
20 sensitive, caring company that I know you want to be,  
21 you would hold this off until you heard from the FCC  
22 and this Commission until you continued this practice  
23 of taking this information. And just as a note --  
24 MR. SMITH: Which would put me,  
25 Mr. Commissioner, at a distinct disadvantage with

1 Mr. Smith, did you have a comment? Because I  
2 was going to call people from the public.  
3 MR. SMITH: Pardon me, Mr. Chairman. I  
4 wanted to clarify an issue that Commissioner Spitzer  
5 raised because I'm not sure that I was as clear as I  
6 need to be.  
7 If we handle billing on behalf of a long  
8 distance company, that information that is contained  
9 in the billing records, calling patterns of that  
10 particular customer, that is not our information.  
11 That is the information of the long distance carrier,  
12 and we would not and could not utilize that  
13 information for our own marketing purposes. And I  
14 wanted to make that clear on the record.  
15 CHMN. MUNDELL: Thank you, Mr. Smith.  
16 Commissioner Irvin I think has something to  
17 say.  
18 COM. IRVIN: Mr. Smith, I just have one other  
19 question, if I could, and then I do want to hear from  
20 the public and give them their opportunity. They've  
21 been waiting patiently here.  
22 You've given a Web address. And our Staff  
23 went and pulled up that Web page, and there is  
24 nothing. This is just a blue copy of it. There is  
25 nothing on your home page that identifies where you

19 (Pages 70 to 73)

<p style="text-align: right;">Page 74</p> <p>1 can go to find out this policy in easy fashion. Can 2 you explain why not? 3 MR. SMITH: I would have to go into the site 4 myself and respond to that question, and I'm sure that 5 we could before the close of this hearing so that I 6 could provide you an appropriate and thorough answer. 7 COM. IRVIN: It just goes to my point that I 8 made earlier, that the company makes it as difficult 9 as possible -- what appears to me, to make it as 10 difficult as possible to get information when we have 11 issues like this. So hopefully, that's another little 12 thing that I think can easily be corrected. 13 MR. SMITH: I'd be happy to check that out. 14 COM. IRVIN: Thank you, Mr. Chairman. 15 CHMN. MUNDELL: Thank you, Commissioner 16 Spitzer. 17 I'll go ahead and start calling members of 18 the public. 19 The first person I'll call is Eroca Daniel. 20 Please come forward and obviously state your name for 21 the record and tell us what you'd like us to know. 22 MS. DANIEL: Good morning, gentlemen. Eroca 23 Daniel. 24 This is a private citizen interested in the 25 opt-out. It appears to me that the public privacy</p>	<p style="text-align: right;">Page 76</p> <p>1 of Qwest. I have the name of the company and the 2 gentleman who called. Again, it's not public 3 information, but I can give this to you at some time 4 if it's necessary. And they were calling from a 5 brokerage -- a health brokerage firm in Mesa, trying 6 to sell me health insurance. And I said, I have a 7 private unlisted number. And I said, how did you get 8 this? And they said, we get this from Qwest. 9 So that brings me to another point. Since I 10 do have a private unlisted number and I do pay extra 11 for this privilege, why is it that my information is 12 being shared? I believe that my extra cost for a 13 private unlisted number, if it has been shared, needs 14 to be reversed back to me with interest. And perhaps 15 if it's shown that they have been doing that, that 16 they be penalized. 17 CHMN. MUNDELL: Thank you, ma'am. Sounds 18 like adding insult to injury. We'll get that specific 19 information from you and follow up on that issue to 20 ascertain how that information was disseminated. 21 MS. DANIEL: If this is correct, this meeting 22 is moot. It's already happening. 23 Thank you. 24 CHMN. MUNDELL: Thank you for your comments. 25 COM. IRVIN: I don't agree this meeting is</p>
<p style="text-align: right;">Page 75</p> <p>1 barnyard door -- or the barn door, I should say, has 2 been closed after the Qwest horse has taken off, 3 disseminating our information. 4 I called Qwest, this was several days ago, in 5 order to opt-out of any sharing. What I found is that 6 they could not confirm that they were going to -- that 7 they would opt me out. I had to take the word of the 8 nice people I was speaking to. I said, how do I do 9 this? And the first employee said, call later in the 10 afternoon, and they'll check it and you can confirm 11 it. I said, okay. However, both employees -- I said, 12 you know, I really don't understand about this. What 13 have they been doing up to now? And both employees, 14 whose names I have, but this is not a court of law, 15 this is open hearing, so I figure hardworking people's 16 names don't have to be disseminated. And they said, 17 oh, they're sharing this now, but only among their own 18 affiliates. 19 When I got a phone in this town, I thought 20 that I would get a dial tone, not a ringer at dinner 21 time with a solicitor. So in that area, you have two 22 people from Qwest, two Qwest employees, telling me 23 they are already sharing this internally. 24 Two days ago, on the 14th, I get a call, and 25 it's from a -- not an internal employee or affiliate</p>	<p style="text-align: right;">Page 77</p> <p>1 moot because certainly we need to put a stop to this 2 action. I think the Commission has made it clear to 3 Qwest our feelings; but, clearly, we have to do 4 whatever we can to protect the public, and my 5 colleagues have made that very, very clear. 6 MS. DANIEL: I certainly appreciate that. 7 What I'm saying is if, indeed, they have been sharing 8 this information and if, indeed, a private outside 9 company has received this information from Qwest, we 10 are trying to close the door when the horse has 11 already run. 12 COM. IRVIN: That may be true, but we've got 13 to close that door sooner or later. 14 MS. DANIEL: And catch the horse. 15 CHMN. MUNDELL: I think we've got to look 16 into that because it contradicts what was stated 17 earlier, because it doesn't sound like it was in the 18 family of Qwest companies. 19 COM. IRVIN: Remember, Commissioner, that's a 20 big company. 21 CHMN. MUNDELL: Robert Lytle. And then after 22 this gentleman speaks, we will call out three names at 23 a time so if you can sort of get ready, get in the 24 on-deck circle. And we'll have one in the batter's 25 box and one in the batter's circle and one on the</p>

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1 steps of the dugout.

2 Thank you, sir.

3 MR. LYTLE: Commissioners, I want to know  
4 first or looking around the room, how many of you have  
5 devices to monitor phone calls? No one has devices to  
6 monitor phone calls?

7 The thing is that I get something in my mail  
8 one day that says they're going to sell my private  
9 information, and another time I get something in the  
10 mail saying that they want to sell me something to  
11 monitor my calls. So I'm beginning to believe that  
12 the more people that have our information are going to  
13 be making phone calls. Therefore, those that do not  
14 have monitoring devices are going to have to buy them.  
15 That's my short order.

16 CHMN. MUNDELL: Thank you, sir.

17 Any comments?

18 (No response.)

19 CHMN. MUNDELL: We appreciate your taking the  
20 time to come down here today.

21 MR. LYTLE: Thank you.

22 COM. SPITZER: Two days in a row.

23 CHMN. MUNDELL: Shelly, call out three or  
24 four names.

25 SECRETARY HOOD: Michael Wilkins, Mary Ellen

1 ACAA is concerned that this bill insert,

2 which is essentially consumer education material, was  
3 distributed as marketing material, also, which has  
4 been brought up, that there is no Spanish version of  
5 this material. I read the material three times to get  
6 a clear understanding of it. If English is not my  
7 first language, I would be completely just -- I would  
8 not have informed consent as to what Qwest was asking.  
9 And, again, the Federal Communications Commission  
10 earlier sought to prohibit companies from using  
11 consumer data without their express permission.

12 ACAA encourages the Arizona Corporation  
13 Commission to take the lead of the FCC and the  
14 original opt-in approach.

15 Thank you very much.

16 CHMN. MUNDELL: Thank you for your comments.

17 COM. IRVIN: Mary, let me ask you a question.

18 And you made a good point. I'm going to make the  
19 assumption you have some college education.

20 MS. KANE: Yes.

21 COM. IRVIN: Possibly even a degree?

22 MS. KANE: Yes.

23 COM. IRVIN: So a college-educated person  
24 with a degree has a difficult time understanding this.

25 MS. KANE: I have a Master's degree from

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1 Kane, and Seth Franzman.

2 COM. IRVIN: You need to speak into the  
3 microphone so they can hear you, Shelly.

4 SECRETARY HOOD: Michael Wilkins, Mary Ellen  
5 Kane, and Seth Franzman.

6 CHMN. MUNDELL: Any of those people here?

7 Go ahead and come forward and welcome and  
8 please state your name for the record.

9 MS. KANE: Yes, good afternoon, gentlemen.  
10 My name is Mary Ellen Kane, and I'm here today to  
11 advocate on behalf of low income residents of Arizona.  
12 I'm employed by the Arizona Community Action  
13 Association.

14 ACAA has been monitoring Qwest's intent to  
15 share customer account information. Our organization  
16 is concerned deeply with regard to the impact this may  
17 have on Qwest's low income customers. ACAA is  
18 concerned that low income customers, as a population  
19 segment, are least likely to participate in an opt-out  
20 procedure. ACAA is concerned that the same customers  
21 will be unwitting victims of future target marketing.

22 The bill insert, as we've already mentioned  
23 several times, directly states, we also sometimes  
24 disclose account information to third parties when it  
25 is commercially reasonable to do so.

1 Thunderbird.

2 COM. IRVIN: So you have a Master's degree,  
3 and you found this difficult.

4 MS. KANE: I pay the bills in our house. I  
5 never saw the insert. I pulled out the bill and I  
6 paid it and sent it on its way. I pulled it off the  
7 Internet and read it several times. I had a general  
8 overview, but I had to read it several times to make  
9 sure I understood each aspect of it. And I feel I  
10 have an advantage over another portion of the  
11 population of Arizona.

12 COM. IRVIN: And my point is, you are a  
13 well-educated citizen here. So it was difficult and  
14 confusing to you. Think of what it is to the other  
15 people.

16 MS. KANE: My point exactly.

17 CHMN. MUNDELL: You have an MBA from  
18 Thunderbird?

19 MS. KANE: I have an MIM, yes.

20 COM. SPITZER: Then there's no hope for  
21 lawyers, then.

22 COM. IRVIN: Well said, Commissioner.

23 CHMN. MUNDELL: Who's next?

24 COM. SPITZER: Mr. Franzman.

25 MR. FRANZMAN: Mr. Chairman, point of

21 (Pages 78 to 81)

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1 clarification. I filed a slip for comments. I didn't  
2 indicate that I wanted to speak.  
3 CHMN. MUNDELL: Thank you, sir. We want to  
4 give everybody that wants an opportunity to speak.  
5 COM. IRVIN: We'll give those to the court  
6 reporter so those comments are noted in the record.  
7 CHMN. MUNDELL: Thank you, Commissioner  
8 Irvin.  
9 SECRETARY HOOD: Is Mr. Wilkins here?  
10 (No response.)  
11 CHMN. MUNDELL: We'll have another three  
12 names.  
13 SECRETARY HOOD: Phyllis Rowe, Jon Poston,  
14 and Julius Walters.  
15 CHMN. MUNDELL: Come on down. State your  
16 name for the record, please.  
17 MS. ROWE: I'm Phyllis Rowe. I'm president  
18 of the Arizona Consumers Council, and we're a  
19 non-profit statewide group that's been in Arizona for  
20 35 years, and we're volunteers.  
21 We've gotten lots of calls on our line about  
22 this issue. Consumers are irate. They're very upset.  
23 They're upset about this negative check-off. And  
24 so -- that they have to take action.  
25 Now, always until about a year or so ago, we

1 Now, a telephone company that does this kind  
2 of thing, mails to millions of people, should  
3 certainly have had adequate lines available and  
4 adequately trained people to handle this kind of  
5 volume. And better yet, a voice response system,  
6 which I believe they're going to do.  
7 We've had particularly irate people who have  
8 had to pay a monthly fee for their number, which is  
9 not supposed to be on the directory, yet they're  
10 getting a lot of calls, and they don't like that.  
11 They're very upset. They don't see why they should  
12 have to pay a fee of like \$1.90 a month and still have  
13 people calling them because Qwest has given their  
14 number out.  
15 One woman called to tell me that she wanted  
16 me to know that she was going to fire Qwest and she  
17 was going to go to somebody else. And I explained to  
18 her that there really wasn't very many other options  
19 that she had because Qwest was a virtual monopoly in  
20 our state, and she was very unhappy about that.  
21 Now, we urge you to oppose the release of  
22 information by Qwest. We think that when they are  
23 doing this, they should have some kind of provision  
24 for Spanish-speaking and for other people to respond  
25 because sometimes people who have difficulty getting

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1 did not have this negative check-off option. And I  
2 think that a lot of consumer groups are working on it  
3 because it was unfair in banking, it was unfair in  
4 insurance, and it's unfair in this issue, too.  
5 When people tried to call and reach a number,  
6 they were unable to reach the telephone number. So I  
7 had people calling me who had called for three days,  
8 trying to get through on the line to Qwest.  
9 Now, sometimes over the weekend they didn't  
10 have services. But even when I called, the phone rang  
11 15 times --  
12 CHMN. MUNDELL: Ma'am, is that recently?  
13 Because I had that same experience. I called a week  
14 ago and couldn't get through.  
15 MS. ROWE: That was a week ago. Now they  
16 have speeded it up a bit. But the people didn't  
17 realize all these things that were hidden in small  
18 print and that they would have to respond to them.  
19 And so they're calling me, and they're particularly  
20 upset because when they finally reach someone, they  
21 try to sell them additional services, additional  
22 plans, or discourage them from this opting out  
23 program.  
24 They're afraid of identity theft. They're  
25 really worried about privacy issues.

1 through when they call the line, they can't  
2 communicate with the person that's there, particularly  
3 Spanish-speaking people. And we'd like for you to  
4 insist that they provide adequate voice response  
5 system for callings and cease using this issue as a  
6 business opportunity to sell more services.  
7 Thank you.  
8 CHMN. MUNDELL: Thank you.  
9 Any questions?  
10 (No response.)  
11 CHMN. MUNDELL: Thank you.  
12 MR. POSTON: Good morning, Commissioners.  
13 Thank you for holding this hearing. My name is Jon  
14 Poston. I'm the consumer coordinator for Arizonans  
15 for Competition in Telephone Service.  
16 This company has a long history of expecting  
17 customers to stand still and be milked. And I'm  
18 delighted to see the Commission appears to be on the  
19 verge of telling them at some point, sorry, no more  
20 moo for you. We'd like to see Qwest do something  
21 other than get it backwards for a change. The company  
22 should, as Commissioner Mundell suggested, ask  
23 customers' permission, not the reverse.  
24 While I'm here, I want to dispel a myth that  
25 has been injected into this hearing by the company.

22 (Pages 82 to 85)

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1 This is not about a company that has a huge  
2 competitive force out there ready to provide  
3 competitive service. While there are, in fact, a  
4 hundred companies registered in the state with the  
5 Commission or approximately that many prepared to  
6 provide competitive service, there have been events  
7 that have intervened, including rates that have been  
8 set, that have prevented that kind of competition.  
9 The Commission is, of course, in the process of  
10 addressing that question. That process is already  
11 under way.

12 But I want to make it clear, what you're  
13 dealing with is not a company that has great  
14 competitive pressures. There isn't another telephone  
15 company on every corner of the street. Qwest is and  
16 continues to be a monopoly. The evidence that the  
17 Commission received at its most recent rate case  
18 indicates that the company has a penetration of about  
19 95 to 97 percent of its customer base in the  
20 geographic region that it serves in the state of  
21 Arizona, and I doubt seriously that that's changed  
22 substantially.

23 I'd like to suggest to you that competition,  
24 in fact, would help, and that's one method that you  
25 can use to provide an answer to this in addition to

1 private.

2 Telephone has made it possible for anyone to  
3 call me. Qwest makes it easier for them to find my  
4 number, especially marketeers and salespeople, then  
5 offers me a service to block these calls. Yesterday I  
6 got a mailing from them in which they provided  
7 information that they would sell me a machine that  
8 would block these calls. They also in the very fine  
9 print on the bottom mention that there would be  
10 several different charges that went with this little  
11 machine, but they didn't tell me anything at all about  
12 how much these charges would be.

13 Qwest is my ISP for my computer. They switch  
14 my service anytime they feel like it. They recently  
15 forced me to change from NetScape to Explorer and  
16 promised faster service. It used to take me one to  
17 two minutes to get online. With their new faster  
18 service, it now takes me three to four minutes.  
19 Browsing is slower, too. This is Qwest's fault as  
20 they provide the phone service.

21 As my ISP, they used to provide me with  
22 Scottsdale dial-up numbers. With the switchover, they  
23 now provide me with four dial-up numbers, one as far  
24 away as Gilbert. The default number is the slowest of  
25 the bunch, and I'm not very happy about that. Their

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1 these regulatory steps that can be taken by the  
2 Commission. And for those, we applaud you.

3 But were the competitive climate such that we  
4 had an alternative to Qwest, then customers would have  
5 at least the possibility that another company would  
6 find this as the marketing opportunity and sell them a  
7 service that they could purchase in which the company  
8 would guarantee not to market their information. And  
9 I suggest to you that that is the broadest and easiest  
10 method of resolving the numerous problems that this  
11 Commission faces in regard to Qwest. That while this  
12 is a step-by-step process, as the regulatory process  
13 necessarily is, the broader situation of injecting  
14 competition into the marketplace would, in fact, help  
15 resolve your many problems and many of them  
16 simultaneously.

17 Thank you.

18 CHMN. MUNDELL: Thank you.

19 MR. WALTERS: My name is Julius Walters. I  
20 live in Fountain Hills.

21 I want to thank you folks for holding this  
22 meeting today. I think it's a very necessary meeting.  
23 In regard to our invasion of privacy, it should be up  
24 to Qwest to ask me to permission to sell my data, not  
25 for me to call them and ask them to keep my data

1 intent is to try to get me to order their DSL service  
2 when I get upset with their slow dial-up service.

3 When I try to call Qwest's business office  
4 and finally get through, I get their menu, which never  
5 has any subject I want to discuss and takes several  
6 minutes to go through. I then try to get to talk to a  
7 person and get put on hold. More than often than not,  
8 after holding for several minutes, I am dropped, and I  
9 am left holding a dead line. Automated service, as  
10 far as I'm concerned, should be banned. It's a waste  
11 of customers' time.

12 Qwest does everything they possibly can to  
13 increase my costs for phone service, and I'm totally  
14 fed up with this. Qwest should be made to reimburse  
15 us for time that we waste trying to contact them for  
16 information, et cetera.

17 I thank you very much.

18 CHMN. MUNDELL: Thank you, sir, for your  
19 comments.

20 Call maybe three or four more, Shelly.

21 SECRETARY HOOD: John DeLasaux, Becky  
22 McCutchen, Dean Sellers.

23 CHMN. MUNDELL: Please state your name for  
24 the record. Welcome.

25 MR. DELASAU: Chairman Mundell and

23 (Pages 86 to 89)



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1 Commissioners, my name is John DeLasaux. I'm a local  
2 business person and also I have about 11 years behind  
3 me in dealing with phone services all over the world,  
4 dialing long distance into companies, and that's what  
5 I used to do. Not telemarketing. Technical  
6 support-type thing.

7 I really need to preface my comments by  
8 saying that Qwest has shot itself in the kneecap with  
9 its phone system. Its internal phone system is  
10 probably the worst phone system ever invented in my  
11 experience. That's just for their own information.

12 I'm not going to take a lot of time talking  
13 about dialing in and having the problem of getting my  
14 privacy except to say that I finally gave up and went  
15 to the Web page. When I went to the Web page, in my  
16 experience, in the last 12 years on the Internet, I  
17 have never entered a Web page and asked for something  
18 without getting a confirmation. It's business  
19 practice on the Internet. So when I opted in to the  
20 Web page and -- to opt-out, I expected to get an  
21 e-mail. And I didn't get it.

22 I got concerned, so I called the business  
23 office to verify that it actually happened. And the  
24 person that I got could not explain to me how privacy  
25 works at all. And finally, she said, well, but I've

1 problem with that is that the cat is already out of  
2 the bag because our privacy will have already been  
3 used. Once the cat's out, you can't put it back in.

4 There's a lot of misunderstanding about this.  
5 And I'm really concerned that Qwest needs to get their  
6 attitude tuned up a bit to let them understand that we  
7 aren't all a bunch of dummies out there. They don't  
8 own our private information. My private information  
9 is stuff I own. And if they want to use it, they  
10 better ask me. Bottom line.

11 Thank you.

12 CHMN. MUNDELL: Thank you, sir.

13 COM. SPITZER: Thank you very much, sir. And  
14 I just think, very briefly, two points. Your  
15 discussion about the use of the Internet -- at year  
16 end, I paid a bunch of bills and made a bunch of  
17 charitable contributions over the Internet, bar dues,  
18 donation to my alma mater --

19 CHMN. MUNDELL: Explain what bar dues mean,  
20 Commissioner Spitzer.

21 COM. SPITZER: The amount that you pay for  
22 the privilege of practicing law in the state of  
23 Arizona.

24 CHMN. MUNDELL: I just want to make sure  
25 everybody understands what you mean by that.

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1 taken your name off the list. Whatever that means.

2 I didn't trust her, so I called back to get  
3 another person in the business office. When I asked  
4 him what had happened, check my account, please, he  
5 said, there's no code put into your account. Then he  
6 explained to me that there are actually four codes. I  
7 have never heard an explanation anywhere about the  
8 fact that there are four different privacy codes that  
9 you can have in your account. And when he explained  
10 to me what the codes were, he said, and by the way,  
11 the lady that put the last code into your account put  
12 in the wrong code. So, he said, I'll fix that for  
13 you. And he fixed it. And actually he ended up  
14 putting two different privacy codes into my account.

15 You know, I don't know how to describe why it  
16 is that Qwest can't understand that they're their own  
17 worst enemy. But when I read this yellow piece of  
18 paper that's a legal notice that Qwest put out, it is  
19 couched in the most generalized terms that have no  
20 meaning whatsoever. And the idea of commercially  
21 reasonable says that that means that Qwest gets to  
22 decide what's commercially reasonable.

23 The bottom line is that they don't really get  
24 to decide because somebody's going to sue, and the  
25 courts are going to decide what was reasonable. The

1 COM. SPITZER: Everything entailed a  
2 confirmation. Even for a \$50 contribution to an  
3 obscure organization that may not have the  
4 wherewithal.

5 MR. DELASAUX: That's standard business  
6 practice.

7 COM. SPITZER: It's all done by e-mail. And  
8 I think what we had here was the unfortunate precedent  
9 was set with Gramm-Leach-Bliley, which was financial  
10 organizations were required under federal law to send  
11 out a notice. Whole forests were cut down to produce  
12 these notices that all ended up in the trash can.  
13 There was virtually no interest by consumers in opting  
14 out.

15 And, unfortunately, it was felt that -- the  
16 marketing folks in Qwest felt that was the precedent  
17 and that the people wouldn't be interested. And I  
18 think it was a surprise that people were interested in  
19 privacy rights attendant to telecommunications.

20 MR. DELASAUX: People can't be interested in  
21 something they don't know about. This should have  
22 been publicized beforehand that says you're going to  
23 get a notice. Putting the notice in is not good  
24 practice. Maybe you buy a half page ad in the paper  
25 and say, look what's coming. I don't know.

24 (Pages 90 to 93)

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1 CHMN. MUNDELL: That's why I said earlier it  
2 needs to be readable and understandable so people can  
3 make an informed consent if they want the way the  
4 opt-out provision is currently in existence.

5 Please state your name.

6 MS. McCUTCHEN: I'm Becky McCutchen. I'm  
7 from the East Valley.

8 Thank you to having this hearing. I'm a  
9 Qwest customer. Used to be U S WEST. When I first  
10 signed up for my account, I told them my account was  
11 not for solicitation. I do spend extra to have an  
12 unlisted number. I do not want my information given  
13 out. I don't want it sold. I don't want it given to  
14 anybody else that will sell it or give it out.

15 Thank you.

16 CHMN. MUNDELL: Thank you, ma'am. That was  
17 short and to the point.

18 MR. SELLERS: My name is Dean Sellers. I  
19 also have been a customer of Qwest for years, both  
20 professionally and personally.

21 The highest compliment that I could give them  
22 as far as the services rendered to me is pathetic. I  
23 think that what we've experienced here today on the  
24 part of Mr. Smith as the personal representative of  
25 Qwest is a futile expedition -- or expedition of a

1 too, because I think the only concern he really truly  
2 has here today, if you're able to look inside his mind  
3 and his heart, is whether he has a job tomorrow or  
4 not.

5 The people of Arizona are interested, again,  
6 if I can reaffirm, a most precious right that we have  
7 in this country, and that's our privacy. They don't  
8 have a right to trample on one of our most precious  
9 rights.

10 Now, he bragged up here that they have 290  
11 operators that they just hired. Well, I'm not too  
12 good of a mathematician, but if I put a ratio of 290  
13 operators with 3 million hostages that they're holding  
14 out there, that's not a very good percentage for our  
15 benefit.

16 Basically what Mr. Smith also did is he made  
17 a statement very plain to the people of Arizona when  
18 you were asking him as pertaining to our position as  
19 far as the Tenth Circuit Court. And he was very  
20 explicit to state that they are going to stick with  
21 them. And what I'd like to say is, basically, they're  
22 hiding behind the skirts of the Tenth Circuit Court.

23 The consumers of Arizona are experiencing  
24 from Qwest and Mr. Smith a sneak attack and a  
25 trampling, again, of the most precious right, which is

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1 camouflage double talk is basically what we've seen  
2 here today. The comments, dancing around the bush,  
3 around the issues, not answering questions directly  
4 shows the integrity of the company. And this is what  
5 they expect us to believe when he tells us that he  
6 really cares about the customers here in Arizona.

7 I'd just like to ask three questions and make  
8 a couple -- three points:

9 First of all, as was presented very  
10 eloquently by our Attorney General, why should we put  
11 our trust, the people of Arizona, in the hands of a  
12 company that's already under investigation for  
13 consumer fraud? That's my first question that every  
14 Arizonan needs to ask himself.

15 Second of all, why should the burden be  
16 placed on our back to have to protect what is one of  
17 our most precious rights, and that's our privacy. I  
18 think it's an insult to injury that they would even  
19 come forth with this type of lame excuse for their own  
20 profiteering.

21 The people in this country are tired of  
22 smooth-talking half-truths being presented by large  
23 corporations. The only thing they're concerned about  
24 is the bottom line of their smoke-filled boardrooms.

25 If I was Mr. Smith, I'd be pretty concerned,

1 the privacy.

2 I think he needs to read the lips of the  
3 people here today because I think we speak for the  
4 vast majority of the people of Arizona. And that is,  
5 opt-in is the only option that we're going to accept.  
6 We're not going to accept anything else, and we're  
7 drawing a line in the sand.

8 You are our representatives. You have our  
9 trust. And we have a great deal of trust in the three  
10 of you. And I appreciate the comments that you've  
11 made today because they've been very close to the  
12 heart of what I would consider to be the heartbeat of  
13 the people of the state of Arizona.

14 I again would just say that there is only one  
15 thing that we will accept, and that's the opt-in  
16 provision to where it is their responsibility to come  
17 to us at their expense and at our convenience and ask  
18 us for permission. And if we don't give it in  
19 writing, they don't get anything. It's opt-in and  
20 opt-in only.

21 CHMN. MUNDELL: Thank you, Mr. Sellers.

22 COM. IRVIN: Mr. Sellers, just real quick,  
23 for math purposes, with your example of 3 million and  
24 290, it comes to each customer will handle -- I'm  
25 sorry, one million three hundred forty-four-plus

25 (Pages 94 to 97)

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1 thousand people.

2 CHMN. MUNDELL: Shelly, do you want to call  
3 some more names.

4 SECRETARY HOOD: Albert Sterman, Laurie Shea,  
5 Carolyn Cortez.

6 CHMN. MUNDELL: Did you hear her, those names  
7 that she just called?

8 Welcome.

9 MR. STERMAN: Good morning. No, good  
10 afternoon. My name is Al Sterman, S-t-e-r-m-a-n, vice  
11 president of the Arizona Consumers Council and  
12 chairman of the Utility Committee of that council.

13 I can only applaud, Commissioner Mundell,  
14 Commissioner Irvin, and Commissioner Spitzer, in your  
15 comments at the beginning of this meeting and at the  
16 pointed questions that you asked Qwest.

17 One thing I'm surprised at, why aren't there  
18 operators here today at this meeting taking names of  
19 people who want to opt-out? It's a meeting that talks  
20 about that. Why couldn't Qwest have at least one  
21 person so those of us who for one reason or other have  
22 not already opted out have that opportunity to do so  
23 today?

24 This action of Qwest attacks the fundamental  
25 rights of citizens of the state. Telecommunications

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1 won't say -- they say they don't sell, but they lease,  
2 they give our most private information to people who  
3 probably should not have it.

4 The information that Qwest is and can gather  
5 is the person's most private history: health, what he  
6 reads, political affiliations, social contracts,  
7 social contacts, business interests. Whatever it is  
8 that is private that should be held in the most  
9 private thoughts. What they're selling is my thoughts  
10 or giving away my thoughts. And that should not be  
11 allowed.

12 Why should this company be allowed to use or  
13 sell this most private information and, in fact, a  
14 person's most intimate thoughts. Qwest, according to  
15 the Tenth Circuit, may have the legal right to do  
16 something. But that does not mean that they have or  
17 should have ethically or moral right to trade this  
18 information.

19 I may be moving back and forth for just a  
20 couple of minutes.

21 Sharing of information even within their  
22 companies, especially in the competitive market, gives  
23 Qwest a distinct competitive advantage. They're not  
24 going to sell it to any other competitor, but they're  
25 using it within their family of competitive companies

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1 by itself intrudes. And it's an intrusive device  
2 because the telephone is in your home. The computer  
3 is in your home. Whatever telecommunications you have  
4 is in your home. It's always on. And then the phone  
5 rings, and it can ring anytime of the day or night,  
6 including at 4:00 in the morning.

7 COM. SPITZER: It's not on in the Spitzer  
8 house all the time.

9 MR. STERMAN: But the telephone is, at least.

10 So it's intrusive. Somebody calls, you're  
11 intruding on what we are doing, whether it's eating or  
12 sleeping or watching TV or writing a proposal or  
13 whatever it is we do.

14 But we expect that when we lease a line from  
15 Qwest, and that's what we're doing, we're leasing a  
16 line, we're buying a telephone, leasing a line, and we  
17 expect to have what we consider privacy, at least to  
18 the extent that it can be given, is to be adhered to.

19 But that does not give this corporation or  
20 any corporation from going to intrusiveness to  
21 invasion of privacy. That privacy has been mentioned  
22 before by a number of people as a fundamental right.

23 This company, along with organizations it  
24 deals with, are literally invading our homes with  
25 their telemarketing, with their giving, leasing -- I

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1 to market to their customers of Qwest as a local  
2 monopoly utility.

3 To the bill insert asking people to opt-out  
4 if they wanted to. I would think that 4 percent on a  
5 bill insert is a marvelous response. I remember when  
6 we went to Caller ID and we sat for weeks going over  
7 the information on the brochure that Qwest would send  
8 out offering Caller ID and asking people to either  
9 opt-in or opt-out of Caller ID and giving people the  
10 opportunity of saying, I don't want my name published  
11 in Caller ID. I want that private. We spent weeks  
12 with Qwest -- U S WEST at the time -- with the  
13 Attorney General, with Staff, with interested parties,  
14 and came up with a brochure and a deadline.

15 And we said to Qwest, you will send that out  
16 by U.S. Mail and a return envelope or return postcard  
17 so that people get it, it's first class. They were  
18 supposed to send it first class. They sent it bulk.  
19 But they were supposed to send it first class at the  
20 time. At least you had the opportunity to open it up,  
21 read the letter, and then make your decision in the  
22 privacy of your own home. This does not give us that.

23 And I think if Qwest is going to use an  
24 opt-out -- and I don't agree with an opt-out. I agree  
25 only with an opt-in. And in a sense, I don't think

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1 they should give that information out to anyone. It's  
2 private, my proprietary information, and I should be  
3 able to determine who it goes to.

4 If Qwest gives this information to what they  
5 call their outside marketers, what assurance do I have  
6 that my information would not be taken by these  
7 outside marketers and used to my detriment, whatever  
8 that detriment is. What assurance do we have that  
9 that information remains within the company and only  
10 within -- and given back wholly without being used  
11 again to the company.

12 I was concerned about a couple of other  
13 things:

14 One, I don't understand these codes that were  
15 brought up. If there was more than one code to enter  
16 into their computers to protect my privacy and they  
17 only put in one code, what about the three other  
18 codes? Who gets those if this is correct? And I can  
19 only go by what the gentleman before me talked about.

20 And the other is -- and I think it was  
21 mentioned if a company, one of the family of  
22 companies, is sold off, does that private information  
23 go to that company? And if it does, why? Or if the  
24 company goes into bankruptcy, does that information  
25 get sold off as a part of the bankruptcy because it

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1 deceiving because I took it as an advertisement to  
2 sell something.

3 And also, I think it should have been put out  
4 in Spanish or any other language that people speak in  
5 the United States because there are a lot of people  
6 that do not speak English.

7 Another thing that I'm concerned about is how  
8 much is it going to cost us? If this does pass and  
9 you get to give our information out, how much is it  
10 going to cost us to keep you from doing that? Are we  
11 going to have another charge as we do in the Caller  
12 ID? I purchase Caller ID to know who's calling us,  
13 and you guys have conveniently put on names like  
14 unidentified caller, unwanted caller, blocked calls  
15 and so on and so on. So I'm paying for a service that  
16 if one of my relatives from out of state calls me, it  
17 comes across possibly as out of area the same as a  
18 telemarketer or somebody that doesn't want me to know  
19 their name for God knows what reason. And I'm getting  
20 tired of paying for things through the phone company  
21 that I'm not really getting the proper service.

22 And, again, I don't want my personal  
23 information given out.

24 Thank you all.

25 COM. SPITZER: Thank you.

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1 becomes worth some money to somebody else who's going  
2 to buy the company or buy the mailing lists?

3 I thank you very much for your time and  
4 congratulate you on holding this meeting.

5 CHMN. MUNDELL: Thank you for your comments.  
6 You've raised a couple additional questions that need  
7 to be answered at some point.

8 Shelly.

9 SECRETARY HOOD: Is Laurie Shea here?

10 (No response.)

11 CHMN. MUNDELL: Laurie Shea.

12 (No response.)

13 SECRETARY HOOD: Carolyn Cortez.

14 CHMN. MUNDELL: Please state your name for  
15 the record and welcome.

16 MS. CORTEZ: This is the first time I've ever  
17 spoke in public, so I'm nervous.

18 CHMN. MUNDELL: We won't be too hard on you.

19 MS. CORTEZ: My name is Carolyn Cortez.

20 And first off, I'd like to say, I don't want  
21 my personal information put out anywhere. I think if  
22 you've got a good idea that you want us to know about,  
23 you could continue putting it in our billing as you  
24 have done in the past. And I did find that "the  
25 following information does not impact your bill" very

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1 CHMN. MUNDELL: Thank you, ma'am.

2 SECRETARY HOOD: Chuck Jones, Donna Neill,  
3 Cristina Santiago.

4 MR. JONES: My name is Chuck Jones. I'm a  
5 central Phoenix resident.

6 I have a grandmother who's in an assisted  
7 care home. She's 97 years old. And when she was  
8 first moved in there, she was not going to have a  
9 phone. She's got five children who love her very  
10 much. And I said, that's not right. And I said, I  
11 will pay for the phone. And the bill comes to me.  
12 She has a phone for the sole reason that her children  
13 in Colorado and California and Arizona can call her  
14 and say, "Mom, I love you." She is not interested in  
15 buying anything. She's not interested in getting  
16 interrupted by having to buy anything.

17 We've lost sight of the fact that Qwest for  
18 hundreds of thousands of people in this state is a  
19 monopoly. It is the only choice going to get local  
20 coverage for telephone service.

21 Qwest wants to say, well, we should be doing  
22 this the opt-out because that's what everybody else  
23 does. It's a childish argument. And I bet there's  
24 not a single adult with children in this room who has  
25 looked at their child at one time or another and said,

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1 No, you're not going to do what everybody else does  
2 because you're not everybody else. And besides that,  
3 it's wrong.

4 That's what we've lost the scope of. This is  
5 just something that's wrong. They say it's legal  
6 because of this Court of Appeals ruling. There are  
7 lots of things in this country that are legal that are  
8 neither right nor fair to your fellowman. The Black  
9 people in this country were granted the right to vote  
10 by the Constitution, and it was four generations  
11 before enough elected officials with enough integrity  
12 got together to say, hey, you've been denying these  
13 people their voting rights. This is wrong. Four  
14 generations to go back to doing what's right.

15 Qwest wants to say that they're just  
16 emulating companies like banks and insurance companies  
17 and credit card companies. I can call those companies  
18 24 hours a day, seven days a week, and get help. I  
19 cannot call Qwest 24 hours, seven days a week. They  
20 eliminated that service a couple years ago.

21 Mr. Smith -- I noticed very carefully.  
22 Everything he said today was in the present tense.  
23 That leaves lots of openness for the future. And I  
24 think we should be very scared what any corporation  
25 does because of one name, and that would be Enron.

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1 He says he has honor and respect for his  
2 customers. If Qwest had honor and respect for their  
3 customers, there would not be a hearing here today.  
4 None of us would be here. They would have backed out  
5 of this, and they would have seen that what the public  
6 wants is an opt-in system and not an opt-out system.

7 They talk about the information will not be  
8 sold. Once again, it's very carefully worded. Lots  
9 of companies trade information in various ways in this  
10 date and time.

11 And the bankruptcy issue was another good  
12 one. We don't know what accountants Qwest has at this  
13 time or what's going to go on. The Wall Street  
14 Journal reporter on the PBS news hour last night said  
15 that there were lots of other Enrons just waiting to  
16 happen, and we don't know who or when.

17 If you don't want to be harassed, there is  
18 just a litany of extra fees you have to pay the phone  
19 company. My grandmother's phone, we had to pay extra  
20 for nonlisted service. There's a one-time set-up fee  
21 for this. And I'm not sure what the difference is  
22 between nonpublished and nonlisted. One can be gotten  
23 out of directory assistant. But for both of them,  
24 there's a one-time set-up fee, but you pay a monthly  
25 charge in perpetuity. If you want a black spot by

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1 your name in the phone directory, there's a one-time  
2 set-up for that, and you pay a monthly charge in  
3 perpetuity. People buy Caller ID to prevent being  
4 harassed.

5 For every single service that you need -- and  
6 you only got the phone in the first place because of  
7 what you want to use the phone for. And even if you  
8 have a no solicitation dot in the phone book, I  
9 suspect Qwest will probably still call you on their  
10 own under their plans to try to sell you extra  
11 services that you neither need nor want.

12 I work in a company that does shipping. I  
13 have seen plenty of people sending back Qwest cellular  
14 phones because they didn't understand all the terms in  
15 the first place that were required. And one of my  
16 co-workers, in fact, has a \$1,200 billing statement  
17 right now because he didn't cancel the service quick  
18 enough and didn't understand all of the terms.

19 They say they have no plan to share this  
20 information now. They won't state that they -- either  
21 now or in the future. They are not saying that. They  
22 are very careful in what they say. And plans change,  
23 and that's what concerns I think most of us in this  
24 room.

25 I am extremely disappointed in Qwest's

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1 attitude toward this Commission. Chairman Mundell  
2 asked a very straightforward question about the  
3 publicity pamphlet that went out. Was it printed in  
4 Spanish. Several people have gotten up here and said  
5 that it should be. We don't know if it went out in  
6 Spanish or not because Mr. Smith did not even give the  
7 courtesy of a yes, no, or I don't know answer to the  
8 Commission Chairman. If Qwest has this little respect  
9 for the Commission of the State of Arizona, they  
10 certainly don't have any for the rest of us that are  
11 customers, and they should be ashamed of themselves.

12 CHMN. MUNDELL: Thank you, sir.

13 MS. NEILL: Mr. Chairman and Commission  
14 members, I'm Donna Neill, and I'm the chairperson of  
15 Westwood Community, the most populated square mile in  
16 Phoenix, and I'm also the director of Nailem, and  
17 we're about 35,000 strong.

18 You know, it was real interesting when the  
19 Attorney General was here. She called you colorful.  
20 I can tell you as community members, we call you  
21 appalling. On our Web site, we sent out a thing and  
22 asked folks to give us their opinions, and we received  
23 hundreds of e-mails, and not one comment came that  
24 said, we trust them, we respect them, we're glad  
25 they're in our state. They all came back with

28 (Pages 106 to 109)

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1 comments of things that had happened.  
2 I can also tell you that you have a thing on  
3 your phone that you have to have a security name when  
4 you call to get any information. I went through ten  
5 operators the other day, and not one operator asked me  
6 for my security code. Not one. I mean, that was  
7 something that I had to do for protection, and you did  
8 not protect me. So I can certainly know that if you  
9 didn't do it on that case, it isn't going to happen  
10 again.  
11 You can do what you can do because you can.  
12 And as a director of Nailem, I'm going to make a  
13 commitment not only to the Commission but to the state  
14 of Arizona and to you that anytime you come before  
15 this Commission, anytime that you're here and you're  
16 wanting change or ability to do something different, I  
17 will be standing here in front of you.  
18 When Mr. Smith would not even compromise or  
19 listen or talk about -- send a straight signal to  
20 everyone that's in this room that you're going to do  
21 what you want to do and how you can do it. But this  
22 is going to be your stopguard right here.  
23 And we thank you for being here. We thank  
24 you for doing this. And we know that it's going to  
25 stand on the line, and it's not going to happen.

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1 Thank you.  
2 CHMN. MUNDELL: Shelly.  
3 Hold on for a second, ma'am.  
4 SECRETARY HOOD: Dianne Woods, Diane Bacon.  
5 CHMN. MUNDELL: Thank you, ma'am. Welcome.  
6 MS. SANTIAGO: Thank you for the opportunity  
7 of speaking. My name is Cristina Santiago of Hispanic  
8 Community Alliance. I am the director.  
9 And we have mentioned before about the  
10 Hispanic community not getting information. This has  
11 been bothering me for over a year now. I get a lot of  
12 complaints about Qwest, which at that time was U S  
13 WEST before. And the Hispanic community have their  
14 hands tied, completely tied. They do not get any  
15 information. When they call in to get the service,  
16 they have to go through hours -- probably hours of  
17 waiting. They get sold out on the cellular phones.  
18 This is the main thing, they do not get explained as  
19 to the cost, all kinds of costs that there are, and so  
20 they get a real large bill. They come to me to  
21 complain.  
22 I thought I was smart enough not to be a  
23 victim of Qwest; but, unfortunately, twice within the  
24 last six months, I've been a victim of Qwest.  
25 I want to talk to Janet Napolitano about the

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1 fraud problem. I know that we're not here for this,  
2 but as far as the opt-in/opt-out, yes, the Hispanic  
3 community are not aware. I was educated here in the  
4 United States. I also did go to college. And I still  
5 couldn't understand it even.  
6 CHMN. MUNDELL: Welcome to the club.  
7 COM. IRVIN: You're not alone.  
8 MS. SANTIAGO: To me, this is the most  
9 blatant form of monopoly. I have thought, where can I  
10 go besides cellular system to get service. Like has  
11 been mentioned before, you call in because you have a  
12 problem. You have to wait minutes, minutes, and  
13 minutes. When you finally get someone, they do cut  
14 you off half of the time. You ask for supervisors.  
15 It's like forever to try and get someone who's a  
16 supervisor. They might say, okay, we take care of the  
17 problem. But a month later, you've got the same  
18 problem. It's not been taken care of.  
19 I'm for opt-in. This opt-out, why should we  
20 have to go through opt-out. I mean, this is our  
21 right. It's our privacy. Why should you have this  
22 opportunity to give out the phone numbers to whomever.  
23 Like one of the people here mentioned before,  
24 we are unwilling victims. The Hispanic community and  
25 other organizations, other people that do not speak

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1 English are the unwilling victims.  
2 And as far as the cellular system, this is --  
3 to me, it's rip off. And I would say to Qwest, you  
4 cannot hide the sun with your fingertip. It's coming  
5 out to light, the problem. And I'm really, really  
6 very pleased that the Commission has finally done  
7 something about this or is doing something about this.  
8 And I know I'm going to make sure that as many  
9 Hispanics in the area are informed of the problem and  
10 to call in and to inundate Qwest with complaints.  
11 Thank you for listening.  
12 COM. SPITZER: Thank you very much.  
13 CHMN. MUNDELL: Thank you, ma'am.  
14 COM. IRVIN: Thank you.  
15 SECRETARY HOOD: Dianne Woods.  
16 (No response.)  
17 SECRETARY HOOD: Diane Bacon.  
18 MS. BACON: I'm available if you have any  
19 questions.  
20 CHMN. MUNDELL: Okay.  
21 SECRETARY HOOD: Jap Harrison and Leslee  
22 Olson and Cesar Marin.  
23 MR. HARRISON: I'm Jap Harrison, and I want  
24 to thank the Commission for holding this meeting today  
25 against Qwest.

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1 And I just have a few questions I want to ask  
2 them. The brochure you sent out, how come it couldn't  
3 have been the other way? If somebody want to join  
4 your family, call in. Not somebody that want to be  
5 out of your family have to call in. Because here,  
6 there's a whole lots of people that have had a  
7 contract with you people for years. And they get  
8 their phone bill, and they think they know just to  
9 write out a check and send it in, and they don't see  
10 this. And so this was tossed. And in a couple of  
11 months, they're going to be getting a bill where  
12 they've got to pay for this. And they don't want the  
13 out.

14 And another thing, I want to know about your  
15 family. See, you talking about your family. This is  
16 going to be put in your family. And I know my family  
17 consists of cousins, uncles, everything. And if I  
18 tell one something, it goes on down to his family way  
19 out someplace else.

20 COM. SPITZER: There's an old saying: You  
21 can pick your friends, but you can't pick your family.

22 MR. HARRISON: There you go. And so it's  
23 going to tell it within his family, and his family's  
24 going to pass it on within his own.

25 And here's the piece of paper. If you don't

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1 privacy information. And so Qwest is doing its part  
2 by sending out this notice. Everyone that is a  
3 customer gets a bill, so the notices are in there.  
4 And many businesses have this process of giving out  
5 phone numbers.

6 But yes, Qwest is the only option for phone  
7 service for many people. And so it also is worth  
8 saying that the online option of letting people know  
9 that they do not want -- letting Qwest know that they  
10 do not want the information given out is very quick.  
11 And so if they would go that route, it would be a lot  
12 more helpful I think to people versus being on the  
13 phone. But they've done their job, also, by updating  
14 and having more people available to answer the phone  
15 for people that want to not give out your private  
16 information.

17 So I think they've also extended their  
18 deadline and they've done a good job of trying to be  
19 hospitable after the situation that has happened the  
20 past couple weeks.

21 CHMN. MUNDELL: You're a brave soul. You  
22 understand the concern about the notice. At least I  
23 believe and I think my fellow commissioners believe  
24 the notice could have been stated differently so that  
25 people could make an informed consent about opting out

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1 want to receive the junk mail, call these telephone  
2 numbers. And here it says down here about the  
3 telephone. It says after a few months, your calls  
4 will be reduced. It don't say stopped. It says,  
5 after a few months, they will be reduced. And I know  
6 right now today, there's going to be five  
7 telemarketing phones on my phone when I get to the  
8 house now, and they're fixed where you can't call them  
9 back. And there's three, two of them come in about  
10 dinner time.

11 The only thing that I just got a comment to  
12 make about -- years ago, there used to be a postcard  
13 in Arizona. They had two buzzards out on the fence.  
14 And they hadn't had nothing to eat. And they said,  
15 Ain't nothing died, so I'm going to kill something.  
16 And it looks like you want to kill something here  
17 today.

18 COM. IRVIN: I can't beat that. I thought  
19 the rabbits was a good analogy. That's even better.

20 CHMN. MUNDELL: I asked about the family, but  
21 I couldn't articulate it like he did.

22 Welcome.

23 MS. OLSON: My name is Leslee Olson.

24 I think the media has blown this out of  
25 proportion. The Court said that Qwest could have this

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1 of their program. So that's one of the concerns that  
2 we have obviously. And so we appreciate you coming  
3 down and stating your opinion.

4 Thank you.

5 COM. SPITZER: Mr. Chairman, notice, I think  
6 it was in our Prescott bill had 928. And I don't know  
7 if it had the same in Phoenix. The new 928 area code.  
8 And so I held it up and said, Mr. Chairman, Jackie, to  
9 call your mother, we've got to dial 928 now, and  
10 tossed it, without knowing that there was anything  
11 else.

12 COM. IRVIN: Can I call Ms. Olson back to the  
13 podium, please. I have a question for her.

14 CHMN. MUNDELL: Certainly. I said she was a  
15 brave soul.

16 COM. IRVIN: Ms. Olson, you stated that you  
17 work for The Aaron Company?

18 MS. OLSON: Yes.

19 COM. IRVIN: Is that the same Aaron Company  
20 that does lobbying work for the phone company?

21 MS. OLSON: Sir.

22 COM. IRVIN: Thank you.

23 MR. MARIN: My name is Cesar Marin. I'm kind  
24 of nervous.

25 I'm an ex-employee of Qwest Communications.

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1 I was a sales consultant for them. I was fired on  
2 Christmas Eve, which wasn't too nice, along with a few  
3 other people.

4 But what my whole opinion on this is a lot of  
5 people have downed Qwest on a lot of their practices  
6 and a lot of their things. And I think they're  
7 misunderstood.

8 And like the whole cell phone thing. As a  
9 sales consultant, I would explain it to customers, and  
10 I would give them my personal number. And they would  
11 call me back and say, you never told me this. And I  
12 did tell the customer that. It's just customers have  
13 selective hearing. It's just a lot of times Qwest  
14 gets the bad wrap for a lot of things that they don't  
15 do.

16 But as far as the opt-out, there's a lot of  
17 things that attention doesn't get put to. For  
18 example, this whole opt-out thing. I did receive the  
19 training on it before I left Qwest. And the  
20 understanding that I got from the opt-out was that  
21 when a customer calls in and asks me as a sales  
22 consultant, I need to transfer my service, I need to  
23 do something to my account, then I have to ask the  
24 customer permission to use their account information  
25 to actually offer them services. So if they don't

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1 minutes were racked up on it. And then she comes home  
2 and finds it, calls back Qwest, yelling and screaming.

3 And I took the whole situation to a  
4 supervisor. Well, they should have read the contract.  
5 It's not our fault. They're still responsible for  
6 \$200 cancellation, they're responsible for monthly  
7 service, and they're responsible for a \$600 unit that  
8 was sent to them. So this customer ended up with over  
9 a thousand dollar cell phone bill that Qwest was  
10 making her pay. And she was crying on the phone.

11 And I took it to a supervisor, and the  
12 supervisor refused to remove anything. And gave a  
13 credit card payment over the phone for it. Because  
14 the Hispanic people do not like to owe people. And  
15 for us, it's a detriment to have bad credit or not to  
16 pay somebody. So she was forced into paying this  
17 money when she should have not paid it.

18 And as a Qwest employee myself, if a customer  
19 calls me, they're calling that number, I get on the  
20 line as a sales consultant. And they're asking me,  
21 hey, I want to opt-out, I'll tell them, yeah, yeah,  
22 yeah, we'll go ahead and do it. But I won't put it on  
23 their account because it won't help me because we're  
24 commissioned sales. And if we don't make our sale, we  
25 get fired.

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1 have the opt-out thing or they don't have the  
2 permission to do that, then they can't actually sell  
3 anything or offer anything to the customers. So I  
4 understand it on that end.

5 But on the end that I don't understand and I  
6 don't agree with is that when they have the access to  
7 all of their information, all of these telemarketers  
8 get it, and a lot of these telemarketing companies  
9 work for Qwest and sell products for Qwest.

10 The biggest one that I have problems with is  
11 the PCS. Qwest will have a telemarketing company that  
12 they hire. The customer didn't call in to opt-out, so  
13 they give all of the customer's information.

14 And this is just an example. Janet Rivera  
15 was her name. I still remember her name. She's a  
16 Hispanic woman. She was one of the customers that I  
17 had assisted. And she had a problem because she only  
18 speaks English. She has all these telemarketing  
19 firms -- only speaks Spanish. And she has all these  
20 telemarketing firms calling in English. One of these  
21 telemarketers called her and offered her a cell phone.  
22 Well, of course, she didn't understand anything, so  
23 she really wasn't able to speak to this person. This  
24 person went ahead and sent her the cell phone anyway.  
25 So her kids got it, they started playing with it,

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1 COM. IRVIN: Run that by me again. You said  
2 that if somebody called in, you don't put it down  
3 because you're commissioned sales?

4 MR. MARIN: I'm a commissioned salesman.  
5 It's not going to make me money. And supervisors  
6 listen in on many calls when we do this, and they do  
7 nothing about it.

8 And I asked the supervisor on one phone call  
9 -- this was very interesting. A customer had called  
10 in reference to installing service, and this girl was  
11 trying to sell Custom Choice, which is our premier  
12 package. And she said, your service is going to be  
13 \$32.95 a month. It's going to be this, this, this,  
14 and this, and just gave her a choice to have  
15 Linebacker or not. They never disclosed the IFR,  
16 which is the disclosure by the Corporation Commission.  
17 They did not disclose a lot of the information. They  
18 didn't disclose any of the taxes. And they just told  
19 them what they were going to get, which was the most  
20 expensive package that they had.

21 And a supervisor was listening in on the  
22 phone call, and I asked her, is that right? And she  
23 said, well, the customer agreed to it, and it's  
24 perfectly fine. There's nothing wrong with it. It's  
25 called assuming the sale.



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1 It's not called assuming the sale. It's  
2 called slamming. And it's something that Qwest is  
3 having a huge turnover -- a high turnover rate on  
4 their sales people because they're constantly being  
5 fired because they don't make their numbers because  
6 we're forced to slam.

7 So it's an ethics thing. I couldn't sleep at  
8 night anymore, so that's why -- I was actually  
9 thinking of resigning before they were going to --  
10 they were going to fire me -- before I found out that  
11 they were going to fire me because of my numbers  
12 because I felt bad about doing the things that I was  
13 doing, and I refused to do it any further. And so my  
14 numbers started going down. It's something that all  
15 Qwest employees -- all consultants do. The  
16 supervisors don't actually tell us, hey, do this, but  
17 they insinuate. And when they hear on the calls, they  
18 don't stop it.

19 COM. IRVIN: So what I'm hearing you say,  
20 Mr. Marin, is in your experience -- let me ask this  
21 question: You are no longer employed by the company?

22 MR. MARIN: No, I'm not.

23 COM. IRVIN: When did you leave the company?

24 MR. MARIN: January 3rd.

25 COM. IRVIN: Of this year?

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1 MR. MARIN: I have no idea.

2 COM. IRVIN: So you were never told you could  
3 or could not call the Commission. What were you told  
4 when you were educated into the ACC rules when you  
5 knew that you were not disclosing appropriate  
6 information that was required by this Commission under  
7 its regulatory authority?

8 MR. MARIN: They put us through a three-month  
9 training. And during that training -- it's an outside  
10 company that they hired to train us. And when we're  
11 trained, they train us per all the rules, they say.  
12 You have to give the IFR disclosure. You have to let  
13 the customer know what this is, what that is. And  
14 then after you're done with this training, you're  
15 actually on the sales floor, and you're speaking with  
16 customers. And everything changes because now you're  
17 being trained by your supervisors on how to sell. And  
18 they start telling you, oh, it doesn't matter when you  
19 give the disclosure. You can give it at the end of  
20 the call.

21 COM. IRVIN: I want to keep to your personal  
22 experience. I don't want to go on to hearsay or  
23 anything else. Generalizing.

24 MR. MARIN: That's my personal experience.  
25 I'm speaking from what I was taught, from what I was

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1 MR. MARIN: Yes. They gave me a couple  
2 weeks.

3 COM. IRVIN: So you worked up fairly  
4 recently.

5 How long were you employed with the company?

6 MR. MARIN: For a year.

7 COM. IRVIN: So you worked from January to  
8 January?

9 MR. MARIN: January 15th, 2001, was my hire  
10 date, and I was let go on the 3rd.

11 COM. IRVIN: And it's your experience that  
12 this is the practice and custom of Qwest employees?

13 MR. MARIN: Yes. If you were to get a phone  
14 right now and have everybody listen and have somebody  
15 in here that has an account call in and order cell  
16 phone service, they would not give that person all the  
17 disclosures because then they would lose a sale. And  
18 what my job as a salesman is to try to get the  
19 customer to buy the product no matter what it takes.  
20 And that's the whole problem with the company.

21 COM. IRVIN: It seems to me -- now, is  
22 there -- were you threatened? Was there a reprisal  
23 that if you came to the Corporation Commission and  
24 stated, I'm a Qwest employee and this is a practice,  
25 they're violating ACC rules --

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1 told from my supervisors, and from what I was forced  
2 to do in the company. And I don't feel very good  
3 about myself right now because there's a lot of people  
4 that really didn't make very good wages and was barely  
5 getting by with their families and was barely able to  
6 support their families, and I convinced them per se to  
7 get Custom Choice when they didn't need to spend that  
8 money and should have spent it on diapers for their  
9 child.

10 COM. SPITZER: Mr. Chairman.

11 Sir, I want to make two points. You  
12 shouldn't feel too hard for yourself. I want to make  
13 plain -- and I think I speak for my colleagues.

14 No. 1, this Commission is not attacking the  
15 employees of Qwest. We know that there are many very,  
16 very good employees. And over the course of my living  
17 in Arizona for 20 years, I've had problems with the  
18 phone company. No question about it. But a lot of  
19 the folks, the linemen, the customer service reps,  
20 I've had very good experiences and dealt with some  
21 very honest, hardworking people who do the very best  
22 job they can.

23 No. 2, there's a very fine line in terms of  
24 sales practices, and the word is puffing versus fraud.  
25 Everybody who's in sales has to engage in some

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1 marketing. And the question is, at what point do you  
2 cross the line and be either civilly or criminally  
3 acting illegally. And that's a very difficult line.  
4 And in the area of telecommunications, and I've said  
5 this before, it's not -- it is endemic to the  
6 industry.

7 And, unfortunately, very unfortunately, not  
8 specific to Qwest, we're in a situation where Wall  
9 Street analysts, 26-year-old kids, are demanding  
10 people be fired in industries all across the country.  
11 And in telecommunications, we have an area that  
12 historically has been regulated and was deregulated  
13 first in long distance and now in local  
14 communications, once by a federal court, the second  
15 time by an act of Congress.

16 And we're in an area -- and I said this  
17 before, Mr. Chairman -- it's anarchy. And it's not  
18 just Qwest. It's all of the telecommunications  
19 companies. And it's not rule of law; it's law of the  
20 jungle. And it's very unfortunate. And we have a  
21 huge amount of pressure being put on commissioned  
22 sales reps and outside companies, and that has  
23 undermined public confidence in the system.

24 So nobody is attacking you personally. And  
25 as far as I'm concerned, Mr. Chairman, and I think I

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1 now that not only applies to Qwest but to all  
2 telecommunications companies in the state to try to  
3 prevent that unethical and outrageous behavior that's  
4 been described. And that will be coming up for a vote  
5 in the near future.

6 I don't think we have any other speakers, as  
7 I understand it.

8 I said I would give counsel for Qwest  
9 opportunity to ask any questions that we might have.

10 Do you have any, Commissioner Spitzer? You  
11 can certainly ask him -- if he has a comments, we  
12 certainly want to hear them.

13 MR. FYKE: Mr. Chairman, Commissioners, my  
14 name is Tim Fyke. I'm an attorney with the Qwest  
15 Corporation. My office is in Phoenix at 5090 North  
16 40th Street in Phoenix, Arizona.

17 I suspect that it would probably be wise,  
18 first of all, to identify that I'm going to try to  
19 speak to the legal issues. I think one of the legal  
20 issues, though, that is here -- or that we should  
21 consider and what I've heard throughout the day is a  
22 comparison of telecommunications information and the  
23 private information that our customers legitimately --  
24 or the information that our customers have that they  
25 expect legitimately to be kept private and other

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1 speak for my colleagues, nobody is attacking the good  
2 employees of Qwest or the other companies. I think  
3 the problem is we have a corporate culture that has  
4 recently gone to the extreme of quarterly earnings  
5 mean everything. And if you live or die by quarterly  
6 earnings report and you're not really concerned about  
7 even the long-term health of your company because you  
8 have some Wall Street analyst on your back, what does  
9 that say for the consumers.

10 And the problem I have as a commissioner is  
11 not the employees of the company. The problem I have  
12 as a commissioner is the public policy articulated by  
13 Mr. Smith. He ain't giving up. They're going to  
14 fight for opt-out till their dying breath. I think  
15 that's bad public policy. I also happen to think it's  
16 bad business, but I'm just a lawyer. What do I know.

17 But I thank you for coming down here.

18 COM. IRVIN: I wanted to thank you, too, for  
19 that insight. And maybe as things -- Mr. Johnson, our  
20 director of Utilities, might be interested in some of  
21 your experiences for enforcement purposes. Thank you  
22 for coming forth.

23 CHMN. MUNDELL: Let me just say, also, on a  
24 different docket, we have cramming and slamming  
25 rulemaking that we're going through the process right

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1 companies' information.

2 And I would say as a personal comment that my  
3 insurance information, my bank information, my brokers  
4 information, how many checks I write, to whom I write,  
5 that I write them to the doctor, that I write them for  
6 child support, whatever it happens to be, I consider  
7 that to be equally as sensitive and equally as private  
8 as the telecommunications information. So I would  
9 like to suggest that the comparison that we have  
10 sometimes heard about utility -- about the utility  
11 information with other information has not taken that  
12 I think properly into account for the record. So I  
13 did want to make that correction.

14 CHMN. MUNDELL: Counsel, let me interrupt for  
15 a second. You heard one of the speakers, I think one  
16 of the more recent speakers, indicate that sort of the  
17 analogy -- and I have a six-year-old daughter. And  
18 just because everyone else does it, doesn't make it  
19 right. And so using that kind of argument it seems to  
20 me doesn't have a lot of merit at least for this  
21 commissioner. Just because everyone else does it,  
22 this may be the tip of the iceberg, and Congress may  
23 want to revisit all those statutes that I'm sure all  
24 the industry went back to Congress and got the law  
25 changes so this could occur. So the fact that

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1 everyone else does it doesn't make it right. And it  
2 seems to me that Qwest could show good faith in being  
3 the leader in trying to protect privacy rather than  
4 saying, everyone else does it, so we need to do it for  
5 marketing. And that's my personal position on it, and  
6 we'll listen to your legal arguments.

7 COM. SPITZER: Mr. Chairman, I think there's  
8 also a factual issue. And I would disagree. And my  
9 issue is telecommunications information, regulated  
10 utility, is different in kind with respect to privacy  
11 and more intrusive than a bank account. And what my  
12 hope is that a factual record be made to articulate  
13 that distinction.

14 I think you've gotten a flavor for the people  
15 of state of Arizona feel that there's a distinction,  
16 as well, but that future proceedings will further  
17 articulate this issue.

18 MR. FYKE: The point you made, Commissioner,  
19 is the reason I raised it. A significant number of  
20 people -- I know one of the public commenters  
21 indicated that she was equally concerned about  
22 insurance information and financial information, and  
23 we wanted to make sure that you understood that from  
24 our view, that telecommunications information, while  
25 it is private, we also think that these things are

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1 private, as well.

2 COM. SPITZER: Mr. Chairman, if I may quote  
3 from the Central Hudson decision, which is controlling  
4 authority from U.S. Supreme Court, Justice Rehnquist:  
5 A public utility is a state-created monopoly. Indeed,  
6 the extensive regulations governing decision-making by  
7 public utilities suggest that for purposes of First  
8 Amendment analysis, a utility is far closer to a  
9 state-controlled enterprise than is an ordinary  
10 corporation. Accordingly, I think the state has broad  
11 discretion in determining the statements that a  
12 utility may make in that such statements emanate from  
13 the entity created by the state to provide important  
14 and unique public services. And a state regulatory  
15 body charged with the oversight of these types of  
16 services may reasonably decide to impose on utilities  
17 a special duty to conform its conduct to the agency's  
18 conception of public interest.

19 That's from the United States Supreme Court.

20 MR. FYKE: And that is absolutely true, and  
21 it is in the context of that case where they were, in  
22 fact, not taking about telecommunications information.  
23 It was decided in an entirely different context. Now,  
24 that's not to say that it does not control at present.  
25 I'm simply saying to take that quote in that context

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1 and to say that that should be applied to dictate  
2 that, in fact, the Qwest Communication -- the practice  
3 that Qwest proposed is improper I think does not, in  
4 fact, address the correct legal issue, which I think  
5 was addressed by the Tenth Circuit Court of Appeals.

6 COM. IRVIN: Mr. Chairman, if I could, before  
7 Mr. Fyke continues, and I'm going to throw my two  
8 cents in on this. While I'm not a lawyer and I get to  
9 listen to many legal arguments, regardless -- and I'm  
10 not going to debate the issue on the legality  
11 standpoint whether it's legally right or the Tenth  
12 Circuit was correct or wrong. I personally view they  
13 were wrong.

14 Let's look at it from the standpoint that I  
15 made the point earlier this morning and I'm  
16 continually amazed that Qwest has refused to  
17 acknowledge the fact that they're a regulated entity.  
18 Every comparison that you and Mr. Smith and everybody  
19 else has given has been the fact that on unregulated  
20 entities that you have choice. If I don't like the  
21 way my bank is doing business, I can change banks. If  
22 I don't like the products my grocery store delivers me  
23 or sells me, I can change grocery stores. If I don't  
24 like the products at the hardware store, I can change  
25 hardware stores. In this market and in the state of

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1 Arizona and for that matter within the entire Qwest  
2 region, it is a regulated entity that says, if I want  
3 dial tone, I cannot go to anybody else but Qwest.

4 Now, I have a few options, albeit expensive  
5 in rural areas. I have options to use cellular, which  
6 many people have exercised that option. But at the  
7 same time, those people have expressed the desire to  
8 have wire telecommunications services brought to their  
9 home or business with the expectation that those  
10 services that they have and that information is  
11 proprietary. And the distinction is they don't have  
12 the ability to go out and say, I want a new local  
13 telephone company. That service is not available.

14 When and if we ever get to that day in  
15 Arizona, which I hope someday we will, a marketing  
16 blunder like this on the part of Qwest could cost them  
17 potentially tens of thousands of customers based on  
18 what we've seen today. But the fact of the matter is  
19 this Commission has a responsibility to guard and  
20 present public policy and in the best interest of  
21 people.

22 The people have spoken today. They've spoken  
23 to your company. They have spoken all around this  
24 state saying that the policy stinks. That the way  
25 you're going about it is wrong.

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1 This Commission has an obligation. Maybe in  
2 Denver it's an appointed Commission and maybe some  
3 governor appointed those commissioners and thought it  
4 was a good idea. I don't know. But we are elected to  
5 represent the people for the people. Public policy of  
6 this state has been that we will provide telephone  
7 access to every Arizonan living in this state,  
8 regulated telephone access. And so it's from that  
9 standpoint that I look at this. And I can hear all  
10 the arguments that you want; but for the phone company  
11 to come in when consumers have no choice and give  
12 their information to a family, as so eloquently was  
13 pointed out, that includes aunts and uncles and third  
14 cousins and fourth cousins, a family that's growing  
15 and has not yet been defined, I think is morally and  
16 ethically wrong albeit from a legal question.  
17 And I would think that a publicly regulated  
18 entity that has the ability that has locked in rates  
19 that has locked in consumers would be willing and want  
20 to put forth the best interest of the community and  
21 the public not only for their own personal sake  
22 because this is in my opinion not only a black eye on  
23 the company, but surely it will take weeks, months,  
24 potentially years to re-get back the public trust.  
25 And we heard from one of your own former employees

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1 from his experience -- that's why I asked the question  
2 -- of some things that he thought were wrong by the  
3 company and those practices. We haven't got into  
4 that. I don't know whether those are factual or not.  
5 But that was his experience he testified today.  
6 The issue is consumer confidence. I think we  
7 started this morning off that consumer confidence is  
8 lacking with your company, and yet I and this  
9 Commission, my colleagues, we've heard very little to  
10 ease those fears. And that's not the legal issue,  
11 which, again, I defer a lot of those to my learned  
12 colleagues who have law degrees. But I look at it  
13 from listening to the public and doing my job as not  
14 only a regulator but as a voted official of the state.  
15 And what I'm hearing is the company is asking this  
16 Commission to recognize something, but the company's  
17 refusing to hear what the people and the Commission is  
18 saying. And that, to me, is troubling.  
19 COM. SPITZER: Well said, Commissioner.  
20 CHMN. MUNDELL: We discussed earlier I think  
21 with Mr. Smith some of the legal aspects of the Tenth  
22 Circuit decision, and we don't need to -- this isn't  
23 the time or place to debate it more thoroughly than I  
24 think we've already done. Suffice to say that, as I  
25 said earlier, I think Mr. Smith acknowledged that,

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1 that the decision does not prevent Qwest, if they  
2 chose to do so, to have an opt-in provision. We've  
3 heard that you're not going to do that. You've drawn  
4 a line in the sand.  
5 Anything else further that you want to add  
6 from a legal perspective that we need to know?  
7 MR. FYKE: In terms of the legal issues,  
8 first of all, I would say I respect your views. I do  
9 not believe that that is a fair characterization. I  
10 think the company does, in fact, care. But that's a  
11 disagreement. I think Mr. Smith addressed that very  
12 well.  
13 With respect to the legal issues that you  
14 point out, I read the Court of Appeals of the Tenth  
15 Circuit case as agreeing that there is no requirement  
16 that a company independently on its own could not use  
17 an opt-in process. I read the FCC interim order as  
18 suggesting that that is possible. And I would point  
19 out to you that in the Court of Appeals for the Tenth  
20 Circuit, in that opinion in the record before the FCC  
21 that took some like two years to create that resulted  
22 in the decision of the Court of Appeals for the Tenth  
23 Circuit and in the current record before the FCC, it  
24 is our view that the overwhelming support is in favor  
25 of an opt -- I'm going to blow this -- is in favor of

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1 an opt-out, not an opt-in. That an opt-in program  
2 imposes unreasonable restrictions upon free speech.  
3 It imposes unreasonable restrictions on commerce. And  
4 that the reverse, that it is, an opt-in -- I'm sorry.  
5 That the opt-out permits those folks who care about  
6 the privacy, who wants want to protect their  
7 information, to be able to opt-out.  
8 So I would disagree with you, respectfully,  
9 that, in fact, the record shows that there is some  
10 greater value or some greater benefit to an opt-in. I  
11 believe the reverse is true. The record shows clearly  
12 that the value is for an opt-out.  
13 CHMN. MUNDELL: Well, and reasonable legal  
14 minds can differ on that, but you still need a  
15 sufficient notice so people can make an informed  
16 consent, if even you're going to have an opt-out.  
17 You'd agree with that?  
18 MR. FYKE: We certainly do.  
19 COM. IRVIN: Mr. Chairman, I would like to  
20 take that one step further. Based on the last census  
21 that Arizona has a Hispanic population between 22 to  
22 25 percent of the general public, and not one word of  
23 this notice was printed in Spanish, no way -- or there  
24 is no Spanish options given on the call-in line now to  
25 Hispanic people to opt-out nor is there any Spanish

35 (Pages 134 to 137)

<p>Page 138</p> <p>1 option given on the Internet that I'm aware of for 2 Hispanic population to opt-out and make a reasonable 3 choice. So, therefore, I would even find not only is 4 the notice insufficient, but I would find even your 5 free speech argument -- you deny free speech to a very 6 large segment of the population of the state by not 7 speaking in their language, which our schools are even 8 required to do, which our elected ballots are required 9 to do is put it in that language. 10 MR. FYKE: Mr. Commissioner, I cannot speak 11 to whether or not the notice was in Spanish. I have 12 not personally verified yes or no. I do know, though, 13 that the Qwest Corporation has a Hispanic center in 14 which our Spanish speaking customers may call. We 15 deal with them regularly. And I can assure you that 16 we are receiving calls into that center, that we 17 receive opt-outs regularly, and that that is tracked 18 and available. So first of all, I cannot tell you yes 19 or no, we did or did not send it in Spanish. We are 20 certainly going to look into that, and we'll give that 21 you information. 22 No. 2, I can assure you that we have a 23 Spanish center; that if you're a Spanish speaking 24 customer of Qwest, you may call it, and we will deal 25 with you in Spanish. And we would be very happy if</p>	<p>Page 140</p> <p>1 violate the First Amendment as stated in the Tenth 2 Circuit Court of Appeals because, as I read the FCC 3 interim order, it did talk about being able to -- the 4 possibility of drafting -- I think they use the word a 5 flexible opt-in provision. I think that was the 6 terminology used in that interim order. So I would 7 request that we do those two things. 8 If we need to hold another meeting in order 9 to comply with the open meeting law, that's fine. I 10 don't know what we can do here today or what we can't 11 do. But a letter to the FCC -- because the time 12 period, I understand, is closed, we need to do that as 13 soon as possible and also start the rulemaking process 14 for an opt-in requirement. 15 And as I said earlier, I'm willing to go to 16 court to defend that and protect the privacy concerns 17 of the customers of Arizona. 18 COM. IRVIN: Mr. Chairman, before counsel 19 talks on that, I'd like to make it all encompassing to 20 hear his view on it. I'd like to extend your request 21 on this order to open up -- first of all, I'd like to 22 know if we could make it on an expedited matter since 23 time is of the essence in this and since that 24 information is looking at going out in a relatively 25 short order. And we've heard witnesses that are --</p>
<p>Page 139</p> <p>1 you would -- 2 COM. IRVIN: Is that a 24-hour line, 800 3 line? 4 MR. FYKE: It is the Spanish center. It is 5 our regular business office for Spanish-speaking 6 customers. They handle those across all 14 states. 7 COM. IRVIN: One line for all 14 states? 8 MR. FYKE: I don't have any idea how many 9 representatives we have. I believe that the -- again, 10 I should not be speaking to matters over which I am 11 not familiar. I can assure you it is there. If you 12 want more details about the Hispanic -- 13 COM. IRVIN: We won't go into that. 14 MR. FYKE: We'll be glad to provide them. 15 CHMN. MUNDELL: Thank you, counsel. 16 I would suggest at this time -- at least my 17 preference would be -- and I'll look to our learned 18 counsel, Mr. Kempley, for some advice. 19 But my first suggestion would be that we send 20 a letter to the FCC supporting an opt-in provision. 21 That would be our preference as a state commission. 22 Secondly, I would suggest that we open up a 23 rulemaking docket so that we can have a -- develop a 24 sufficient record so that we can attempt to have an 25 opt-in provision that is constitutional and does not</p>	<p>Page 141</p> <p>1 some have said that is going out as we speak. 2 The other thing I'd like to add is on the 3 rulemaking. And if we are to do that and that there 4 is a verification clause added in that whichever 5 method is done, opt-in or opt-out, that it's 6 verifiable and the consumers have those options. 7 And then, third, I would like to add, as I 8 mentioned this morning, that I would like to explore 9 the possibility and add to the rulemaking that the 10 Commission, if the courts rule against this Commission 11 and an opt-in, if that's what we elect to do, that we 12 include rules to allow this Commission to make 13 appropriate discount provision so that consumers can 14 receive something and benefit, should their 15 proprietary information be sold for the sole 16 commercial use of a public utility. 17 CHMN. MUNDELL: And one last thing, 18 Mr. Kempley, and I'll let Commissioner Spitzer state 19 what his views are. I'd also like Staff to look at 20 what our legal options are from the perspective of 21 filing an injunction prior to the -- while the FCC 22 finalizes their rules, whether or not that's even 23 possible. So we don't -- so this information is not 24 released while the FCC goes through their rulemaking 25 process.</p>

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1 Commissioner Spitzer.  
2 COM. SPITZER: Thank you. Mr. Chairman, I  
3 agree. And I don't know if today's the appropriate  
4 time, but I'd be happy to put the suggestions made by  
5 you and my colleague Commissioner Irvin in the form of  
6 a motion. It may be necessary to convene another  
7 meeting with regard to the FCC matter. But the docket  
8 should be initiated as quickly as possible consistent  
9 with due process to establish a record. And the ambit  
10 should be broad, should include recommendations  
11 consistent with the current state of the law regarding  
12 preempts.  
13 I do understand -- my understanding of the  
14 current FCC rule -- interim rule is that there is --  
15 the states are not precluded from adopting regulation  
16 that is consistent with the statute. And what is  
17 notable is the Tenth Circuit decision was a challenge  
18 by Qwest to the rule promulgated by the FCC. It is  
19 not a challenge to the constitutionality of section  
20 222 of the Telecommunications Act of 1996.  
21 So I would agree that we certainly want to  
22 adopt -- open a docket to initiate rulemaking by this  
23 Commission on the issue of privacy consistent with  
24 federal law. It should be done post haste, and I  
25 would be happy to, Mr. Chairman, make myself available

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1 anytime that you wish to schedule a meeting in order  
2 to proceed as quickly as possible.  
3 CHMN. MUNDELL: So, Mr. Kempley, what can or  
4 can't we do today based upon the open meeting notice?  
5 And then if we need to schedule an additional special  
6 open meeting in the next few days to actually vote on  
7 matters, we'll do that.  
8 MR. KEMPLEY: Mr. Chairman, Commissioners,  
9 Chris Kempley, chief counsel.  
10 Let me start -- I'll try to respond in  
11 separate parts.  
12 First, with respect to the question of a  
13 letter to the FCC, we will undertake drafting a letter  
14 for your consideration immediately. The issuance of  
15 such a letter on the part of all the commissioners  
16 may, in fact, require that you reconvene at some later  
17 date, but certainly we can have a draft available for  
18 review within a very few days.  
19 Secondly, with regard to a rulemaking docket,  
20 that, of course, is an effort that will be a joint  
21 effort between the Legal Division and the Utilities  
22 Division of the Commission. I candidly don't think  
23 that we need any further instruction from the bench  
24 with regard to that.  
25 COM. IRVIN: We were clear.

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1 MR. KEMPLEY: I would suggest, point taken,  
2 and that you should anticipate that all arms of your  
3 Staff will be actively engaged in trying to piece  
4 together a comprehensive rulemaking effort. As you  
5 know, Commissioners, the rulemaking process is such  
6 that in order to effectively create a rule, it's  
7 necessary to do a significant amount of preliminary  
8 work in order to have a pretty good conception of  
9 where the rule is going to go before you first act on  
10 the rule. And I'll just parenthetically note that  
11 there is available is the possibility of an emergency  
12 rule in the event the situation is perceived as being  
13 of such importance that it's necessary to have a rule  
14 in force before the entire rulemaking process can be  
15 completed. We're aware of that, and that will be  
16 given consideration.  
17 With respect to a couple of the other things  
18 that were mentioned from the bench --  
19 CHMN. MUNDELL: Mr. Kempley, before you do  
20 that -- because I think I asked the question -- I  
21 don't expect a legal answer on those today, but all I  
22 wanted you to do is research the answer for us. And  
23 it's attorney-client privilege, so I don't want you to  
24 answer my question about whether we can go to federal  
25 court and get an injunction today. I don't expect you

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1 to answer that question today, but I want you to do  
2 that research.  
3 COM. SPITZER: Mr. Chairman, if I may,  
4 without unduly adding to your burden, counsel, one of  
5 the aspects of this case that I think is interesting  
6 and noteworthy is that Arizona is one of the few  
7 jurisdictions in the entire United States where  
8 there's an express provision in our state Constitution  
9 granting the right to privacy. I believe it's Article  
10 2, Section 4, of the state Constitution. That may be  
11 more reason why the people of the state of Arizona are  
12 so interested in guarding their privacy rights because  
13 the founding fathers of this state saw fit to put such  
14 an express provision in the state Constitution.  
15 Obviously, if there's a direct federal preemption,  
16 that provision may be of less utility. But given the  
17 current state of the law, I think that issue should be  
18 explored, as well, and with all due respect,  
19 Mr. Chairman, should be added to the research being  
20 conducted as part of this docket.  
21 CHMN. MUNDELL: I appreciate that. In fact,  
22 I think as the Arizona Supreme Court said, Arizona is  
23 one of the first states whose founders thought it  
24 necessary to adopt explicit protection of the privacy  
25 of its citizens. And it's Godbehere vs. Phoenix

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1 Newspapers, Inc. So I appreciate you bringing that to  
2 our attention, and certainly that's another area that  
3 we might have the ability as a state -- and I believe  
4 this is a states' rights issue, also, to go further  
5 than the federal Constitution goes in protecting the  
6 privacy of our citizens.

7 COM. IRVIN: Mr. Chairman, if I can -- excuse  
8 me, Mr. Kempley.

9 I'm going to make one last attempt. I'm  
10 going to ask Mr. Smith, Mr. Fyke, Ms. Wahlert, as  
11 representatives and employees of the company, if they  
12 would go back to Denver and with respect to the state  
13 of Arizona, that they would ask Denver to reconsider  
14 this and suspend the sharing of this information with  
15 respect to Arizona citizens until we get clarification  
16 from the FCC and the state of Arizona regarding this  
17 issue, which is, I think you have now discovered,  
18 which is vitally important to our citizens and is  
19 certainly on the radar screen of this Commission. And  
20 I would ask that the company would voluntarily respect  
21 the wishes of the citizens and withdraw this. And  
22 possibly even if you still want to do marketing, maybe  
23 come up with a better, more consumer friendly plan.  
24 Those are certainly within your purview, but I think  
25 that would go a long way to do some damage control

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1 later date that's fairly soon, some of those things  
2 seem to me to be well within the bounds that Qwest may  
3 make some movement on.

4 COM. IRVIN: Mr. Chairman, Mr. Kempley, and I  
5 certainly sent the challenge to them. But by no means  
6 would I want to send a signal from this bench at least  
7 from my standpoint that that would slow down the  
8 responsibility that the Chairman laid out in opening  
9 up the rulemaking docket like tomorrow or this  
10 afternoon, whichever is faster, and proceed along  
11 those lines.

12 MR. KEMPLEY: And, Mr. Chairman, Commissioner  
13 Irvin, I certainly didn't take any comments from the  
14 bench to mean that we should move less quickly than we  
15 possibly can.

16 CHMN. MUNDELL: Any other -- any final  
17 thoughts?

18 COM. SPITZER: Mr. Chairman, I do have one  
19 final thought; and that is, one of the framers of the  
20 U.S. Constitution at the convention in 1787 said in a  
21 query from a foreigner, "Here, sir, under this  
22 Constitution, the people govern." The people govern.

23 I want to take a moment to thank not only the  
24 people from the ordinary citizens who came down, took  
25 time away from their family or their jobs, to testify

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1 that's in your authority.

2 Thank you, Mr. Chairman.

3 CHMN. MUNDELL: Anything further?

4 MR. KEMPLEY: Mr. Chairman, just briefly,  
5 with respect to your legal options and the comments  
6 about the Arizona constitutional right of privacy,  
7 certainly we do believe that the existence of the  
8 right of privacy in the Arizona Constitution has an  
9 impact on the way this issue will be analyzed in  
10 Arizona and the nature of the options that we will  
11 ultimately present to you.

12 Commissioner Irvin's final statement leads me  
13 to a point that I was going to make; and that is, with  
14 respect to a couple of the specific requests that I  
15 heard coming from the bench that are -- the only word  
16 I can think of are ameliorative. I know that's too  
17 big a word to be using. But would mitigate the impact  
18 of the opt-out plan, such as extending the time from  
19 the March 29th date, seeking verification to  
20 customers.

21 My suggestion, I guess, consistent with the  
22 Commissioner's comments, is that we should give Qwest  
23 an opportunity to respond to those requests before we  
24 finally decide where the line in the sand is precisely  
25 drawn. And whether that response is today or at some

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1 today. I want to thank the people who've called this  
2 office, my office, the Commission, Chairman Mundell's,  
3 Commissioner Irvin's office, our Utilities office.  
4 Government in general, the Attorney General. I think  
5 that's a tribute to the vitality of democracy in this  
6 country, that people are willing to participate in  
7 this process and state their views. We had a woman  
8 who came down and supported the company. That's fine,  
9 too. That's what this process, that's what democracy  
10 is all about.

11 Alexander Hamilton said, "Here, sir, the  
12 people govern." It's not the companies that govern.  
13 It's not the politicians that govern. "Here, sir, the  
14 people govern." And I want to thank the people.

15 CHMN. MUNDELL: Thank you. Anything in  
16 closing?

17 COM. IRVIN: I think Commissioner Spitzer has  
18 summed it up eloquently.

19 Thank you, Commissioner.

20 CHMN. MUNDELL: Thank you. We'll stand  
21 adjourned.

22 (The special open meeting concluded at 1:30  
23 p.m.)  
24  
25

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1 STATE OF ARIZONA )  
 ) ss.

2 COUNTY OF MARICOPA )  
3

4 I, CAROLYN T. SULLIVAN, Certified Court  
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